

## TABLE OF CONTENTS

1.	Motion For Stay.....	2
2.	Request for Oral Argument.....	3
3.	Introduction/Background.....	3
4.	Initial Decision Being Appealed.....	6
5.	Statement of Errors.....	7
6.	Summary of Argument.....	7
7.	ARGUMENT	
	Changes in Commission's Rules of Practice.....	9
	ALJ's Denial of Public Citizen's Rights to Cross Examine AEP's Witnesses Was Arbitrary and Capricious.....	11
8.	Conclusion.....	13

### Attachments

#### Table of Cases:

<i>National Rural Electric Co-Op Ass'n v. SEC</i> , 276 F.3d 609 (D.C. Cir. 2002).....	4
<i>Offutt v. United States</i> , 348 U.S. 11 (1954).....	11

#### Statutes:

Public Utility Holding Company Act of 1935, 15 U.S.C. 79a et seq.

#### Regulations:

Commission's Rules of Practice and Procedure, particularly Rule 210, 17 C.F.R. §201.210.

**ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11616**

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

---

**In the Matter of**

**AMERICAN ELECTRIC POWER COMPANY,  
INC.**

---

)  
) **PETITION FOR REVIEW,**  
) **INITIAL BRIEF OF**  
) **PUBLIC CITIZEN,**  
) **MOTION FOR STAY, AND**  
) **REQUEST FOR ORAL**  
) **ARGUMENT**  
)  
)

**PETITION FOR REVIEW,  
INITIAL BRIEF OF PUBLIC CITIZEN, INC.  
RE: INITIAL DECISION DENYING FULL  
PARTY STATUS AND RIGHT TO CROSS EXAMINE  
AMERICAN ELECTRIC POWER'S WITNESSES,  
APPEAL OF ALJ'S INTERPRETATION OF REVISED  
COMMISSION RULES OF PRACTICE AND PROCEDURE,  
REQUEST FOR ORAL ARGUMENT AND MOTION FOR STAY**

Pursuant to Rules 410, 401 and 451(a) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.410, 401 and 451(a), Public Citizen, Inc. respectfully petitions the Commission to review and reverse the December 22, 2004, Initial Decision of Presiding Administrative Law Judge Robert G. Mahony in the above-captioned proceeding that denies, on a final basis, Public Citizen's request for full party status in the proceeding below and the right to cross examine the utility holding company's witnesses.

Public Citizen cites as legal error Presiding Administrative Law Judge Mahony's interpretation of an April, 2004, change in the Commission's Rules of Practice and

Procedure regarding intervention, which change Judge Mahony found did not alter the Rule, even though it eliminated certain limiting language regarding interventions. Judge Mahony found that the eliminated language still controls, and Public Citizen asks the Commission to reverse this finding, particularly as it applies to proceedings such as this one under the Public Utility Holding Company Act of 1935.

Public Citizen also contends that the Presiding Administrative Law Judge was arbitrary and capricious in denying Public Citizen full party status without giving a reason, other than citing his authority to do so. Public Citizen moves the Commission to stay this proceeding pending its decision on this question because Public Citizen will otherwise be irreparably harmed. In the interests of speeding this determination, Public Citizen also requests oral argument, pursuant to Rule 451(a).

### **MOTION FOR STAY**

Pursuant to Rule 401, Public Citizen moves the Commission to stay the proceedings below pending its decision on the question of Public Citizen's right to full party status and, specifically, it's right to cross examine the witnesses put forward by the merger applicant public-utility holding company, American Electric Power (AEP).

If the hearing is not stayed, either Public Citizen's interests will be irreparably harmed by the loss of the opportunity to cross-examine the utility holding company's witnesses, or the proceedings will have to be reconvened and the hearing reheard, at considerable loss of time and administrative resources, should Public Citizen prevail.

Public Citizen asserts that it is likely to prevail on its appeal, because the Presiding Administrative Law Judge has clearly misinterpreted the change in the Commission's Rules regarding interventions by finding that language which was deleted

from the Rules still controls the Commission's procedures. If, on the other hand, the Administrative Law Judge is correct, then the Commission must amend its Rules of Practice to adequately provide notice to the public that the rules have not in fact changed.

In addition, Public Citizen is likely to prevail because the ALJ has failed to give a reasoned explanation for his decision to limit Public Citizen to only certain forms of participation, excluding cross examination of AEP's witnesses, even though Public Citizen is the only party other than the regulated utility holding company--including the Division of Investment Management-- that has put forward expert witnesses in this proceeding. Section 19 of the Public Utility Holding Company Act encourages the participation of representatives of consumer interests, and the ALJ has failed to state a reason that Public Citizen's participation would not be in the public interest. Indeed, why the ALJ would refuse to allow the only non-holding company party with expert witnesses to cross examine the holding company's witnesses is a mystery, since such cross-examination should help the development of a complete, rather than a one-sided, record in this case on which he, and the Commission, can base their decision.

While the stay may temporarily delay the hearing (depending on the speed with which the Commission acts), Public Citizen notes that the Commission itself delayed for almost three years in setting this matter for hearing after the remand order was issued by the Court of Appeals. Whatever the reason for this initial, unexplained delay on the Commission's part, Public Citizen does not believe that it warrants the sacrifice of rights of the parties as a result of the tight schedule of the current hearing, which the Commission ordered to be conducted on an expedited basis, perhaps to make up for its initial delay.

## **REQUEST FOR ORAL ARGUMENT**

In order to delay the hearings below as little as possible, Public Citizen requests that the Commission grant oral argument regarding this Initial Decision pursuant to Rule 451(a). That rule states:

Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer *shall be granted* unless exceptional circumstances make oral argument impractical or inadvisable.

Counsel for Public Citizen suggests that oral argument could speed a decision in this matter.

## **INTRODUCTION/BACKGROUND**

This matter is before the Commission on remand from the United States Court of Appeals for the D.C. Circuit which issued its decision remanding the case on January 18, 2002, in *National Rural Electric Co-Op Ass'n v. SEC*, 276 F.3d 609 (D.C. Cir.). The Court remanded the Commission's decision approving a merger between two huge public utility holding companies, American Electric Power (AEP) and Central and South West (CSW), under the Public Utility Holding Company Act of 1935. The Court directed the Commission to explain its departure from its prior precedent concerning what constitutes an interconnected system and to explain why utility systems, bordering in one case on Canada and in the other on Mexico, could be considered as operating in a single region of the country under a statute designed to promote local control and management and effective state utility regulation.

Nearly three years later, the Commission—without explanation of the delay—set this remanded matters for hearing as required by the Court of Appeals. In its order setting the hearing, the Commission instructed interested parties to file motions to participate “as

a party or as a limited participant.” Public Citizen filed a timely motion to intervene and participate as a party. (Attachment A.) The motion requested intervention under 210(b) and was intended to request intervention for Public Citizen as a full party. AEP apparently believed that Public Citizen was requesting full party status, and challenged it on that basis, as well as challenging Public Citizen’s right to participate on a limited basis. (Attachment B.) Public Citizen replied, supplementing its original participation request and asking the ALJ to admonish AEP’s counsel for failing to mention that the precedent AEP relied on was issued under the Commission’s Rules of Practice before they were changed in April of 2004. (Attachment C.) However, an inadvertent reference to section 210(c) by Public Citizen’s counsel apparently led the Presiding Administrative Law Judge to believe that Public Citizen intended to request participation only on a limited basis, and he granted what he perceived to be Public Citizen’s request (denying the request to admonish AEP’s counsel.) (Attachment D.)

Counsel for Public Citizen was uncertain how to appeal the granting of a request she had not made, and also as to whether being a limited party would suffice to protect Public Citizen’s interests in this matter. In addition, she was filing other pleadings and testimony in this proceeding. When it appeared that limited party status might not be sufficient to protect Public Citizen’s interests, she asked the Presiding Administrative Law Judge to clarify whether or not Public Citizen would—as a limited party--have the right to conduct cross examination and to appeal adverse rulings, and—if not--to reconsider his decision and grant Public Citizen full party status. This request was made by the date specified by the ALJ for parties to file notices requesting participation in the proceeding. (Attachment E.)

## **INITIAL DECISION BEING APPEALED**

By order issued December 10, 2004, the Presiding Administrative Law Judge denied Public Citizen's request to participate as a full party. (Attachment F.) The order adopted the arguments put forward by the utility holding company applicant in this case, American Electric Power (AEP), that Public Citizen had shown no change of circumstances from its original application.

Although Public Citizen did not receive the order until Monday, December 13, 2004, it made a timely request (there is a five day deadline) on December 14, 2004, for the ALJ to clarify its "limited party" rights or, alternatively, to certificate to the Commission his decision denying Public Citizen the right to cross-examine the utility holding company's witnesses and to otherwise be treated as a full party. (Attachment G). Public Citizen also requested the Administrative Law Judge to certificate to the Commission his order failing to give a reason for denial of full party status, other than the fact that Public Citizen had not shown "changed circumstances" from its first request. Public Citizen pointed out that the ALJ had obviously not intended to deny it full party status in his first order, since that order stated that it was *granting* Public Citizen's motion for limited party status. Thus, there was neither a reason to show "changed circumstances," nor any means for Public Citizen to know what it might have failed to state in its original motion, which Public Citizen believes contained all the requirements for obtaining full party status set forth in the Commission's Rules of Practice and Procedure. Public Citizen also requested the ALJ to stay the proceedings pending the Commission's decision.

On December 22, 2004, the Presiding Administrative Law Judge issued an order denying Public Citizen's request for reconsideration, or alternatively, certification to the Commission and a stay of the proceedings. (Attachment H.) This order, and the preceding one, constitute final decisions, including a chance for rehearing before the ALJ, denying Public Citizen the right to cross-examine the witnesses presented by American Electric Power in this proceeding, and therefore constitute an appealable "initial decision" for purposes of Rule 410.

#### **STATEMENT OF ERRORS**

1. The Presiding Administrative Law Judge erred in finding that elimination of language from the Commission's Rules of Practice and Procedure did not in fact alter those rules, and that the eliminated language continues to control, apparently as "secret law."
2. The Presiding Administrative Law Judge erred in denying full party status to Public Citizen without giving a reason, other than that he could.

#### **SUMMARY OF ARGUMENT**

Although the Commission amended its Rules of Practice and Procedure in April of 2004 by dropping certain limiting language from its intervention rules, the Administrative Law Judge found that the eliminated language still controls. The prior language, dropped from the rules, stated that interveners could not obtain full party status *unless* limited party status was "inadequate." The ALJ is apparently reading the change in the Rules of Practice, part of a Commission rulemaking under Sarbanes-Oxley, to be meaningless window dressing, with the eliminated language still controlling, although now as "secret law" rather than as a transparent part of the Rules of Practice available to



guide the public. Public Citizen believes that the Commission could not have intended such a result, and requests the Commission to reject the ALJ's interpretation of the Rule change as a conclusion of law that is erroneous pursuant to Rule 411 (b)(2)(ii)(B).

The Administrative Law Judge also erred in failing to give a reason for limiting Public Citizen's participation in this proceeding, other than his ability to do so. Public Citizen has never challenged the Law Judge's *authority* to limit a party's participation, but believes that his discretion is not unlimited, is subject to the requirement for reasoned decision-making, and may not be arbitrary and capricious, as it was in this case.

Section 19 of the Public Utility Holding Company Act, as reflected in the Commission's Rule 210(b)(1)(i), provides that:

“[I]n a proceeding under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.”

Proceedings under the Public Utility Holding Company Act are clearly treated differently in the Rules of Practice from those under other statutes that the Commission enforces, presumably because of the statutory provisions of Section 19. Public Citizen submits that the Administrative Law Judge has failed to give a reason why Public Citizen's participation as a representative of interested consumers and security holders, and of the public interest, is not equal to, or greater than, that of other parties granted full party status herein. This is particularly true where, as here, Public Citizen is the only party, other than the utility holding company applicant, which is offering the testimony of expert witnesses.

It seems particularly unfair and arbitrary, as well as *contrary* to the public interest, that the utility holding company can cross examine Public Citizen's witnesses, but counsel for Public Citizen, with the help of its expert witnesses, cannot cross examine the witnesses of the regulated entity. This is particularly true when the Division of Investment Management has called no expert witnesses, nor, apparently, has any in-house engineering or utility operations experts of its own. In a matter that may turn on engineering and utility operations technical expertise, Public Citizen's participation would seem to be substantially in the public interest, and a help to the Administrative Law Judge and the Commission in developing a complete record, rather than one dependent on the "expertise" of the regulated holding company and its hired witnesses. Thus, the ALJ's exercise of discretion and decision of law to deny without good reason Public Citizen's right to cross-examine the utility holding company's witnesses in this case is an important one and one that the Commission should review under Rule 411(b)(2)(ii)(C).

## **ARGUMENT**

### **Change in Commission's Rules of Practice**

Public Citizen contends that the Administrative Law Judge erred in finding that the Commission intended no changes to its Rules of Practice and Procedure in April of 2004 when it dropped certain limiting language from its intervention rules, and in fact meant for the eliminated language to still control interventions. The prior language, deleted from the rules, stated that interveners could not obtain full party status *unless* limited party status was "inadequate." In refusing to certificate his order denying full party status to Public Citizen, the ALJ found that Public Citizen had not cited any

Commission comment or other “controlling precedent” that “explicitly supports its position that Rule 210(b) should be more liberally construed” because the limiting language was deleted. (See, Attachment H, p.3.)

Public Citizen believes that the only common sense explanation for the rule change deleting the language is that the Commission no longer requires law judges to adhere to the limitations set forth in the eliminated provision. Indeed, if the Commission intended for the omitted language to continue to control interventions, the Commission’s action in dropping the language was disingenuous, and the language should be reinserted in the Rules so that the public is aware of what the controlling rules of practice are.

Public Citizen does not believe that the Commission would make such a change in its Rules of Practice merely for appearances’ sake, without intending an actual change in the Rules, and requests the Commission to so interpret its Rules since there is now no “controlling precedent” on this question for the guidance of its Administrative Law Judges.

In addition, Public Citizen believes that the Presiding Administrative Law Judge erred in finding that Public Citizen’s interpretation of the rule change would result in “automatic admission for third parties,” and would abandon the “permissive construction of the governing statute and Commission Rule.” Public Citizen believes that the change in the Rules appears designed to favor increased participation in proceedings by eliminating restrictions on full party status, and that in any event, Section 19 of the Holding Company Act contains no such limitations. However, the ALJ still clearly has discretion to limit participation by a party; he is simply no longer *required* to do so unless limited participation is “inadequate.”

**ALJ's Denial of Public Citizen's Right to Cross Examine AEP's Witnesses Was Arbitrary and Capricious**

However, under any Rule of Practice, an Administrative Law Judge may not be arbitrary and capricious in limiting a party's hearing rights, and must give a reasoned decision for limiting such participation so that it is clear that he or she has not been arbitrary and capricious. It is a long-held axiom of the law that "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11 at 13 (1954).

Clearly, an ALJ cannot deny full party status to a party simply because he or she does not like the party in question, or its counsel. Clearly, an ALJ cannot deny a party the right to cross examine the utility holding company's witnesses simply because he or she wants the holding company to prevail and doesn't want it seriously cross-examined by the only other party with expert witnesses in the case. Public Citizen believes everyone, including Judge Mahony, would agree that limiting Public Citizen's participation for the above reasons would be arbitrary and capricious. There must be standards for the exercise of the Judge's discretion, and he has not cited any here nor explained why Public Citizen fails to meet them, but simply reiterates that he has discretion to limit Public Citizen's participation.

He also states that Public Citizen played a limited role in the prior hearing, but the relevance of this point is unclear, since Public Citizen has offered witnesses and requested to participate fully now, and indeed is the only non-holding company party to do so. Finally, the ALJ states that Public Citizen could have contested his original ruling sooner, but he mentions no harm or even inconvenience to any other party as a result of the delay. In fact, the Presiding Administrative Law Judge set the final date for notices of

participation as December 3, 2004, the date that Public Citizen filed its request for reconsideration for full party status. (Attachment I.)

Public Citizen has proffered the written testimony of John A. Casazza, a distinguished engineer and former utility employee who worked for many years for the largest utility in the PJM Power Pool. Mr. Casazza's resume is attached. (Attachment J.) The PJM Pool is the model which AEP's witness, Mr. Baker, cites as the ideal for Regional Transmission Organizations (RTOs), on which RTOs it relies in its own testimony. The ALJ has given no reason why allowing Public Citizen and its utility/PJM expert the right to cross examine AEP's witnesses would *not* be in the public interest, and for the benefit of consumers and investors, not to mention for the benefit of himself and the Commission in reaching an intelligent decision in this case. The Division of Investment Management is providing no electrical or utility experts, nor has access to any on its staff, as far as Public Citizen can determine, and no other party has provided utility expert testimony herein. In addition, counsel for Public Citizen has thirty year's experience in electric (and natural gas) utility regulatory practice both at and before the Federal Energy Regulatory Commission (FERC), is a former FERC assistant general counsel for electric rates and corporate regulation, and has substantial experience in private law practice advising utility clients regarding PUHCA. Ms. Hargis' resume is attached. (Attachment J.)

As reiterated in its motions for full party status, Public Citizen has repeatedly stated that it has more than 160,000 members nationwide, including more than 24,871 members in the states of Texas, Oklahoma, Indiana, Michigan, Ohio, Kentucky, West Virginia, Tennessee and Virginia, the states in which AEP or CSW currently own

operating utilities, which members are affected by this merger. In addition, Public Citizen's participation in this proceeding as a strong proponent of effective enforcement of PUHCA and as a representative of its members as consumers, investors and the public interest nationwide, will be in the public interest and for the protection of investors and consumers, and no one has submitted any reason to show why it will not be, particularly since Public Citizen is the only non-holding company participant to offer expert witnesses.

Finally, Public Citizen must point out that the ALJ has also limited the participation of the National Association of Regulatory Utility Commissioners (NARUC), even though no one opposed such full party status and both the statute and the rules grant state commissions intervention *as of right*, since one of the primary purposes of the Holding Company Act is to promote effective state utility regulation. See, Rule 210(b)(2)(i). (Attachment L.)

Public Citizen believes that it is clear the Presiding Administrative Law Judge is under a misapprehension regarding the Commission's Rules of Practice as they affect intervention in proceedings under the Public Utility Holding Company Act of 1935, and requests that the Commission clarify its Rules and reverse the ALJ's denial of Public Citizen's right to full party status and the right to cross examine AEP's witnesses for the reasons given herein, and in its initial and second requests for full party status. None of the facts cited above in those pleadings has been challenged.

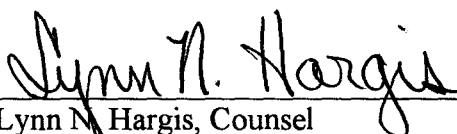
### **CONCLUSION**

Public Citizen requests that the Commission clarify that, when the Commission changed its procedural rules as part of its response to Sarbanes-Oxley, it did so

knowingly and with the purpose and intent to alter such rules. For the reasons set forth above and in the attached pleadings, Public Citizen also respectfully requests that the Commission reverse the Administrative Law Judge's December 10, 2004 and December 22, 2004 Initial Decisions arbitrarily denying Public Citizen full party status and the right to cross examine the witnesses of American Electric Power in the proceedings below.

Public Citizen also requests that the Commission stay the proceedings below pending its decision on these questions, and grant the request for oral argument if it will speed a decision on these matters.

Respectfully submitted,

A handwritten signature in black ink, reading "Lynn N. Hargis", is written over a horizontal line.

Lynn N. Hargis, Counsel  
Public Citizen, Inc.  
215 Pennsylvania Ave. S.E.  
Washington, D.C. 20003

Dated: January 6, 2004

Attachments  
Service List

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

\_\_\_\_\_  
 In the Matter of )  
 )  
 )

AMERICAN ELECTRIC POWER COMPANY, INC. ) Administrative Proceeding  
 ) File No. 3-11616  
 )  
 )  
 \_\_\_\_\_)

**NOTICE OF APPEARANCE AND MOTION TO INTERVENE  
 OF PUBLIC CITIZEN, INC.**

Pursuant to Rule 102 and Rule 210(b) of the SEC Rules of Practice and Procedure, 17 C.F.R. §102 and §201.210(b)(2004), Public Citizen, Inc. ("Public Citizen"), through undersigned counsel, hereby files this Notice of Appearance and Motion to Intervene in the above-captioned proceeding. Public Citizen intervened in the initial proceeding resulting in American Electric Power Co. Inc., and Central and South West Corp., Holding Co. Act Release no. 27186 (June 14, 20000) where the Commission approved AEP's acquisition of CSW under the Public Utility Holding Company Act. Intervenor American Public Power Association ("APPA") and the National Rural Electric Cooperative Association ("NRECA"), subsequently successfully challenged the Commission's approval of the merger. In National Rural Electric Cooperative Association et al. v. Securities and Exchange Commission, 276 F.3d 609 (D.C. Cir. 2002), the court vacated the Commission's order and remanded the matter to the Commission for further proceedings. Public Citizen now seeks to intervene in this remand proceeding.



## **I. COMMUNICATIONS**

The following persons should be included on the service list in these proceedings and all notices and communications with respect to these proceedings should be addressed to:

Lynn N. Hargis, Attorney  
Public Citizen, Inc.  
215 Pennsylvania Ave., S.E.  
Washington, D.C. 20003  
202-454-5183  
202-547-7392 (fax)  
[lhargis@citizen.org](mailto:lhargis@citizen.org)

Tyson Slocum, Research Director  
Critical Mass Energy and Environment Program  
Public Citizen, Inc.  
215 Pennsylvania Ave., S.E.  
Washington, D.C. 20003

## **II. STATEMENT OF INTEREST**

Public Citizen is a thirty-three-year-old, non-profit, consumer advocacy group with more than 160,000 members nationwide, including more than 24,871 members in Texas, Oklahoma, Indiana, Michigan, Ohio, Kentucky, West Virginia, Tennessee and Virginia. Public Citizen appears before Congress, administrative agencies, and the courts on a wide range of issues. Public Citizen has long supported vigorous enforcement of the Public Utility Holding Company Act of 1935 (“PUHCA” or the “Holding Company Act”), a potent and effective statute administered by this Commission, that has protected utility investors, consumers and the public interest in the national economy for nearly 70 years.<sup>1</sup>

Virtually all of Public Citizen’s members are electricity consumers and as such, will be affected by the Commission’s administration of PUHCA. In addition, many of

---

<sup>1</sup> See our website at [www.citizen.org/cmep](http://www.citizen.org/cmep) for a lighter treatment of Public Citizen’s support for the statute, “PUHCA for Dummies.”

Public Citizen's members own utility stocks, either through mutual funds or otherwise, as part of their 401(k) plans or other pension plans, and therefore will be affected by the Commission's administration of PUHCA as investors.

For these reasons, it is apparent that this proceeding is a "matter affecting [the] interests" of Public Citizen and its members within the meaning of 17 C.F.R.

§201.210(c). Public Citizen's interest in this matter remains as substantial as it was over four years ago when it intervened in the initial merger proceeding and successfully sought intervener status. No other party can effectively represent the consumer and investor interests of Public Citizen's members.

Accordingly, for the foregoing reasons, Public Citizen respectfully requests that the Commission, or the Presiding Administrative Law Judge, as appropriate, accept this Notice of Appearance and grant this Motion to Intervene.

Respectfully submitted,

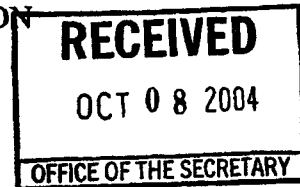
---

Lynn N. Hargis  
Counsel for  
Public Citizen, Inc.

Date: October 1, 2004

Cc: Administrative Law Judge Robert G. Mahoney  
All Persons Identified in Attached Certificate of Service

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



\_\_\_\_\_  
In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.

Administrative Proceeding  
File No. 3-11616

**OBJECTION OF AMERICAN ELECTRIC POWER COMPANY, INC. TO  
MOTION TO INTERVENE OF PUBLIC CITIZEN, INC.**

On or about October 1, 2004, Public Citizen, Inc. ("Public Citizen") filed a Notice of Appearance and Motion to Intervene in the above-captioned proceeding. American Electric Power Company, Inc. ("AEP") hereby objects to the granting of such motion as Public Citizen has failed to demonstrate that it meets the standards set forth in Rule 210 (b) of the SEC Rules of Practice and Procedure for becoming a party to this proceeding.

Rule 210 (b) governs the admission of a party to an administrative proceeding under the Public Utility Holding Company Act of 1935 ("PUHCA") and provides for mandatory admission and discretionary admission of a party. The criteria for mandatory admission as a party are as follows:

[A]ny interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a state shall be admitted as a party ...

Rule 210 (b)(2). The criteria for discretionary admission as a party are as follows:

[A]ny representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted

as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

Rule 210 (b)(1). An entity failing to meet the requirements for admission as a party may still participate in the proceeding as provided in Rule 210 (c):

[A]ny person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests.

Moreover, the Commission's Staff, has opined that "[t]he rules governing intervention in Commission proceedings clearly state a preference for granting motions to intervene on the basis of non-party participation."<sup>1</sup>

As Public Citizen is not (nor claims to be) a governmental body referenced in Rule 210 (b)(2), mandatory admission as a party is clearly not appropriate. Discretionary admission as party under Rule 210 (b)(1) turns on whether Public Citizen is a "representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers ...." In support of its motion, Public Citizen makes only generalized assertions that "virtually all of its members are electricity consumers" and that "many of Public Citizen's members own utility stocks, either through mutual funds or otherwise, as part of their 401(k) plans or other pension plans, and therefore will be affected by the Commission's administration of PUHCA as investors."<sup>2</sup> With respect to

---

<sup>1</sup> Enron Corp., Division of Investment Management's Brief in Opposition to Petitions for Review of Initial Decision Filed by Applicant Enron Corp., Limited Participants Southern California Edison Company and FPL Group, Inc., Amici Edison Electric Institute, National Association of Regulatory Utility Commissioners and the Public Utility Commission of Oregon (Aug. 21, 2003).

<sup>2</sup> In support of its motion, Public Citizen asserts that it was an intervenor in the initial proceeding resulting in the merger of American Electric Power Company, Inc. and Central and South West Corporation (HCAR Release No. 27186). Our records indicate that Public Citizen was one of eleven named entities on one request to intervene (out of nine separately filed requests). Despite several rounds of briefs from other

the alternative grounds for admission as a party under Rule 210 (b)(1), Public Citizen makes no assertion or other representation that its “participation in the proceeding may be in the public interest or for the protection of investors or consumers.”

The generalized assertions proffered by Public Citizen fail to meet the criteria of Rule 210 (b) for admission as a party. Rule 210 (b) requires that Public Citizen represent (1) actual consumers of the parties to the merger under consideration—not simply electricity consumers in general, or (2) actual security holders of either party to the merger under consideration—not simply security holders of utility stocks in general. Public Citizen has not asserted that it represents customers of the parties to the merger in question, nor has it asserted that its members are security holders of the parties to the merger in question. Nor has Public Citizen asserted that its “participation in the proceeding may be in the public interest or for the protection of investors or consumers,” an alternative grounds for admission as a party under Rule 210 (b)(1).

Failure to meet these criteria has resulted in the rejection of requests to intervene as a party in a proceeding under PUHCA. *See Enron Corp., Order Denying Motions of FPL Group, Inc., Sithe/Independence Power Partners, L.P., and the Electric Power Supply Association to Intervene But Authorizing Joint Participation on a Limited Basis* (Nov. 5, 2002)(denying request of entities either doing business with Enron or representing a class of entities which may transact with Enron for failure to establish status as customers of or investors in Enron). Asserting protection of customers other

---

intervenors followed by an appellate proceeding at the United States Court of Appeals for the District of Columbia, our records indicate that Public Citizen did not participate apart from filing its initial request to intervene. In any event, the standards for intervention in this proceeding are dictated by Rule 210 (b) discussed *infra*.

than the customers of parties subject to the proceeding cannot cure a failure to demonstrate adequate nexus. *See Enron Corp, Order Denying Motion of Southern California Edison Company to Intervene But Authorizing Participation on a Limited Basis* (Nov. 5, 2002) (denying request to intervene despite movant's assertion that its customers, *i.e.*, California ratepayers, would be affected by the outcome of the proceedings). Edison sought reconsideration of the Order to allow it to intervene as a party to this proceeding, but was again denied.<sup>3</sup> Commissioner Campos, in denying the reconsideration, stated:

As the Order specifically noted, Edison's March 26 motion failed to establish a basis to allow it to intervene. Indeed, other than a passing reference to overpayments that its ratepayers may ultimately bear, Edison did not make any representation in its March 26 motion or supplement sufficient to warrant Edison's intervention. In its motion for reconsideration, Edison asserts that it is acting on behalf of its ratepayer consumers. This assertion does not demonstrate, as required by Commission Rule of Practice 210(b)(1), why leave to participate under Rule 210(c) would be inadequate. The Division of Investment Management already opposes Enron's application and Edison's intervention would be merely cumulative.

Similar to Edison in the *Enron Corp.* matter, Public Citizen generally refers to the interest of its members that are electric utility customers as grounds for intervention. Rule 210 (b), however, requires not the generalized interests of customers or members of the movant. Rather, as in *Enron Corp.*, only representation of the interests of specific customers of the party subject to the proceeding warrants admission as a party. Public Citizen's failure to establish this, together with its failure to establish its status as a

---

<sup>3</sup> *Enron Corp, Order Denying Motion by Southern California Edison Company for Reconsideration* (Nov. 19, 2002).

security holder of AEP and its failure to assert that its participation in the proceeding may be in the public interest or for the protection of investors or consumers, all require rejection of its request for admission as a party under Rule 210 (b)(1).

Similarly, there is some question whether Public Citizen meets the requirements (albeit less rigorous) of leave to participate on a limited basis. Pursuant to Commission Rule of Practice 210(c), the ability of a non-party to participate in a proceeding is discretionary, and approval from the hearing officer is required.<sup>4</sup> In order to obtain leave to participate on a limited basis, the matter must affect the person's interests. Although the Commission is more inclined to grant leave to participate on a limited basis rather than party status as noted above, it has, however, denied motions for leave to participate on a limited basis. *See Enron Corp., Order Denying Motion of Thelen Reid & Priest LLP to Participate on a Limited Basis* (Nov. 5, 2002) (denying request to participate when movant law firm alleged the proceeding involved interpretation of PUHCA and would affect the interests of its clients potentially subject to regulation under PUHCA).

In its motion, Thelen Reid & Priest LLP ("TRP") stated that it represented a number of exempt and registered public utility holding companies with issues under PUHCA similar to the issues under consideration in this proceeding, and therefore the determination whether Enron satisfies any of the particular criteria for an exemption from the Act "is of interest to many of the companies we represent." In rejecting the request, Commissioner Campos concluded that:

---

<sup>4</sup> See Rule 210(c), Comment (c).

TRP's motion makes clear that, at best, the interests affected by this proceeding are those of TRP's exempt and registered public utility holding company clients. The affect, however, that this proceeding may have on exempt and/or registered public utility holding companies will be the same irrespective of whether such companies are clients of TRP.

Public Citizen's posture in this matter parallels that of TRP in *Enron Corp.* and Public Citizen's members here are in the same position of TRP's clients in *Enron Corp.* While it may be true that members of Public Citizen may be affected by this proceeding, the affect, however, that this proceeding may have on such members will be the same irrespective of whether they are members of Public Citizen. Accordingly, as in *Enron Corp.*, this does not provide adequate grounds for granting Public Citizen's request to intervene.



For the foregoing reasons, AEP respectfully requests that the Motion to Intervene of Public Citizen be denied.

Respectfully submitted,



John B. Keane

Jeffrey D. Cross

American Electric Power Company, Inc.

1 Riverside Plaza

Columbus, OH 43215

(614) 223-1000

(614) 223-1687 (fax)



J.A. Bouknight, Jr.

David B. Raskin

Steptoe & Johnson LLP

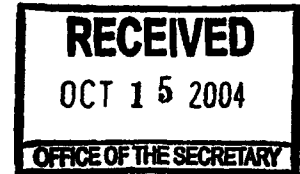
1330 Connecticut Avenue, N.W.

Washington, D.C. 20036

(202) 429-3000

(202) 429-3902 (fax)

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**



\_\_\_\_\_  
In the Matter of )  
 )  
 )

AMERICAN ELECTRIC POWER COMPANY, INC. ) Administrative Proceeding  
 ) File No. 3-11616  
 )  
 )  
\_\_\_\_\_ )

**RESPONSE OF PUBLIC CITIZEN, INC.  
TO OBJECTION OF AMERICAN  
ELECTRIC POWER TO MOTION  
TO INTERVENE, AND REQUEST FOR ADMONISHMENT  
OF COUNSEL**

Pursuant to the ruling of Administrative Law Judge Robert Mahoney at the prehearing conference held in the above-captioned proceeding on October 4, 2004, and the SEC Rules of Practice and Procedure, 17 C.F.R. §201.210(b)(2004), Public Citizen, Inc. ("Public Citizen"), through undersigned counsel, hereby files this Response to Objection of American Electric Power to Motion to Intervene, and a Request for Admonishment of Counsel.

**I. REQUEST FOR ADMONISHMENT OF COUNSEL**

Public Citizen requests that the Presiding Administrative Law Judge (or the Commission, as appropriate) admonish counsel for American Electric Power Company (AEP) for citing precedent in its Objection to Public Citizen's Motion to Intervene without advising the Presiding Administrative Law Judge that the Rules of Practice and Procedure on which the precedent is based have changed since the precedent was issued.

Indeed, the key provision on which Commissioner Campos relied in the *Enron* orders<sup>1</sup> cited by AEP in its objection (at pp. 3-6) has since been removed from the Commission's regulations governing interventions. (See SEC website at Rules of Practice.) Section 210(b)(1) no longer contains a proviso that "[n]o person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this rule would be inadequate for the protection of his or her interests." (see, cited *Enron* orders, p.2.)

Counsel for AEP nonetheless actually quotes the *Enron* orders on which it relies, without noting that the rules have changed, to the effect that:

"This assertion does not demonstrate, as *required by Commission Rule of Practice 210(b)(1)*, why leave to participate under Rule 210(c) would be inadequate." (emphasis supplied).

AEP Objection to Motion to Intervene of Public Citizen, Inc. at p. 4.

Obviously, the Commission would not have dropped this proviso from its Rules of Practice if it intended such a proviso to still apply. Thus it appears that counsel for AEP is either (1) playing fast and loose with precedent based on rules of practice that have changed, without so advising the Commission or the Presiding Judge, or (2) has not bothered to look at the current rules to determine that they have changed. Public Citizen believes that neither choice is acceptable legal practice before this Commission. Counsel for AEP is, at a minimum, wasting the time of the parties and the Presiding Administrative Law Judge with unsupported and frivolous objections or, at a maximum,

---

<sup>1</sup> *Enron Corp., Order Denying Motions of FPL Group, Inc., Sither/Independence Power Partners, L.P., and the Electric Power Supply Association to Intervene But Authorizing Joint Participation on a Limited Basis* (Nov. 5, 2002); *Enron Corp., Order Denying Motion of Southern California Edison Company to Intervene But Authorizing Participation on a Limited Basis* (Nov. 5, 2002).

is attempting to mislead the Presiding Administrative Law Judge and wrongly prevent Public Citizen from intervening in this case.

While this behavior may not rise to the level of requiring sanctions pursuant to Rule 180, 17 C.F.R. §201.180, Public Citizen requests that the Presiding Administrative Law Judge (or the Commission, as appropriate) admonish counsel for AEP that such conduct contemptuous of the Commission's legal processes will not be tolerated in future proceedings in this matter.

## **II. RESPONSE TO OBJECTION TO MOTION TO INTERVENE**

Contrary to AEP's assertions, Public Citizen stated in its motion to intervene that it has more than 160,000 members nationwide, *including* more than 24,871 members in the states of Texas, Oklahoma, Indiana, Michigan, Ohio, Kentucky, West Virginia, Tennessee and Virginia. It is true that Public Citizen did not specifically point out that the named states are those in which AEP or CSW has operating utilities. Nonetheless, Public Citizen is happy to reiterate that it has more than 24,871 members in the above-named states, which are indeed states in which AEP or CSW has operating utilities with electric service territories, and that many of Public Citizen's members are retail electric customers of AEP or CSW and their affiliates. Although, theoretically, states such as Ohio and Texas have "retail choice," the vast majority of AEP's and CSW's retail customers are still served by AEP or CSW companies, respectively. (*See, for example, Attachment A regarding lack of customer switching in AEP company Ohio territories, and lack of competition to AEP in eastern Texas.*)

Even so, Public Citizen disagrees with AEP's characterization of the Rules of Practice as requiring that intervenors must show that they represent "actual consumers of the parties to the merger under consideration—not simply electricity consumers in general" or "actual security holders of either party to the merger under consideration—not simply security holders of utility stocks in general." AEP cites no support for such a limiting reading of the rules, which on their face contain no such limiting language, other than the precedent under the prior rules cited above. Public Citizen believes that not just its members in the AEP and CSW electric service territories, but *all* of its 160,000 members nationwide may be affected by the Commission's decision in this case. If the Commission should agree to read the geographic integration protections out of the Public Utility Holding Company Act as AEP urges it to do in this proceeding, then all of Public Citizen's members will suffer the loss of such statutory consumer and investor protections.

Dean Joel Seligman of Washington Law School, the unofficial historian of the Securities and Exchange Commission, has said that "[T]he SEC's geographic integration and simplification of the utility holding companies historically has been the agency's single most significant achievement...." Dean Seligman also concluded that "[T]he enforcement of Section 11 of the Holding Company Act was the most effective antitrust enforcement program in United States history...." Seligman, *The Transformation of Wall Street; A History of the Securities and Exchange Commission and Modern Corporate Finance*, Northeastern University Press, Boston, First Edition, p.247. Public Citizen believes that the SEC's "most significant achievement" should not be undone by the outcome of this case.

Similarly, if inadequate regulation under the Holding Company Act allows public utility holding companies to spread over the country in uneconomic and geographically widespread ways as they did prior to 1935, thereby avoiding effective state utility regulation as interstate holding companies, such companies are likely to suffer financial collapse. From 1929 to 1936 prior to PUHCA's enactment, 53 utility holding companies declared bankruptcy and 23 more defaulted on bank loans. We have already seen bankruptcies and the downgrading of credit ratings for companies owning generating plants exempted from PUHCA regulation in 1992. Indeed, large numbers of these exempt generating plants are being bought up by investment banks, an extremely ominous sign given the history that led to PUHCA's enactment. According to a July 29, 2004 Platts "Global Power Report," "financial players have come to 'dominate the space'" of the PUHCA-exempt generating business, with holdings reaching \$13 billion and 37 GW.

The harm from the Great Depression of the 1930s was both deepened and lengthened by the first collapse of utility holding companies pre-PUHCA. If there were a collapse of registered utility holding companies today similar to that in the 1930s—but resulting this time from inadequate *enforcement* of PUHCA—all of Public Citizen's members who have any investment in the stock market are likely to be seriously harmed.

#### **Are Texas and Ohio in the Same Region of the Country?**

The chief subject of this hearing, in brief, is whether utilities in Texas and Ohio can be operated as a single utility system in the same "region" of the United States. Public Citizen believes that the reason the United States Court of Appeals went to the unusual (and probably expensive) length of publishing, as part of its decision remanding this case, a map of the United States on which the two utility systems are highlighted (*see*

Attachment B) is that the Court was emphasizing to the Commission that there is no commonsensical reason to claim that Texas and Ohio are in the same region of the country (since, as the court put it, “they are noncontiguous and seemingly dissimilar regions”... 276 F.2d 609 at 618.). However, as absurd as this idea is when viewed from the point of view of common sense, it is even more absurd from an electrical engineering viewpoint, since Texas is largely located within the ERCOT interconnection, which is electrically distinct from the rest of the United States, along with Alaska and Hawaii. For example, the ERCOT region is not subject to FERC’s jurisdiction under the Federal Power Act, unlike the rest of the United States, again with the exception of Alaska and Hawaii. For this reason, the testimony in this proceeding is likely to be highly technical.

**No Other Party Can Adequately Represent Retail Customers**

Unlike the Commission itself, which is on record as favoring “conditional repeal” of the Public Utility Holding Company Act of 1935--apparently in mistaken reliance on the ability of other statutes or agencies to protect electric consumers, or on a particularly naïve view of human nature<sup>2</sup>--Public Citizen believes that PUHCA remains one of the most vital and effective federal statutes in the land and continues to fight against its repeal. Certainly we believe that there is no other statute that could adequately protect electricity and retail gas consumers and investors from the abuses of utility holding

---

<sup>2</sup> Chairman Levitt’s letter accompanying the Division of Investment Management’s report to Congress in June 1995, recommending conditional repeal of PUHCA, stated: “As a result of prudent administration of the Public Utility Holding Company Act, and the development of comprehensive federal securities regulation, the conduct that gave rise to [PUHCA] has all but disappeared.” This statement on June 20, 1995, preceded the fall of Enron, Arthur Anderson, WorldCom, criminal trials for Enron and Westar Energy executives, bankruptcies of Montana Power, NorthWestern Corp., Mirant, and other non-PUHCA regulated utilities, and release of trading tapes of Enron, Reliant Energy, and others gloating over electricity market manipulations. Indeed, AEP itself fired five natural-gas traders and is still contesting a proceeding before the Commodity Futures Trading Commission for allegedly attempting to manipulate natural-gas prices.

companies, including massive consolidation of utility ownership, if PUHCA is repealed either by Congress or administratively by this Commission.

Obviously, parties American Public Power Association (APPA) and the National Rural Electric Cooperative Association (NRECA) have both technical expertise and familiarity with the quite different merger standards of the Federal Power Act. Public Citizen is extremely grateful to them for successfully appealing the Commission's first order approving the AEP/CSW merger under PUHCA. However, the members of these two associations, while they are important wholesale electricity customers, they are also electricity sellers. In short, they are electric utilities, and their interests cannot always exactly coincide with those of retail electric consumers.

Therefore, no other party to this proceeding can adequately protect the consumer interests of Public Citizen's members, both those directly affected in AEP's and CSW's electric service territories as well as the interests of all of Public Citizen's members across the nation who will be affected by the enforcement or lack thereof of this critical consumer-protection statute.

AEP makes one final attempt to exclude Public Citizen from this proceeding by arguing that its posture in this matter is the same as that of a law firm seeking intervention in the *Enron* proceeding because it had clients that were exempt and/or registered public utility holding companies. Public Citizen believes that its role as a consumer advocacy organization representing its members as consumers under a statute designed to protect consumers bears no relation to the role of a law firm seeking intervention to further the interests of its regulated clients. AEP should be aware that the Public Utility Holding Company Act of 1935 was *not* enacted to protect utility holding



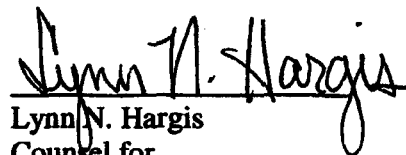
companies. It was enacted because the Federal Trade Commission found 101 volumes of abuses in its investigation of such utility holding companies, and the Congress found more abuses in its own investigations. Since we are already beginning to see such abuses reoccur where utility asset owners have been exempted from PUHCA regulation in recent years (see Footnote 2 and text above), the Holding Company Act's consumer protection provisions, including limiting the geographic spread of such holding companies, is needed now more than ever.

For the reasons discussed above, counsel for Public Citizen is happy to state specifically that Public Citizen's participation in this proceeding as a strong and interested proponent of adequate enforcement of the Public Utility Holding Company Act of 1935 will be in the public interest and for the protection of investors and consumers.

#### **Conclusion**

Accordingly, Public Citizen respectfully requests that the Commission, or the Presiding Administrative Law Judge, as appropriate, grant the Motion to Intervene of Public Citizen in this matter, and to admonish counsel for AEP as requested herein.

Respectfully submitted,

  
Lynn N. Hargis  
Counsel for  
Public Citizen, Inc.

Date: October 15, 2004

#### **Attachments**

Cc: Administrative Law Judge Robert G. Mahoney  
All Persons Identified in Attached Certificate of Service

Attachment A,  
1 of 3

## 10-13: Officials seek to delay ET deregulation again

**Longview News Journal By WES FERGUSON**

Longview officials are leading an effort to delay electric deregulation in East Texas, warning that if it comes too soon, costs will rise and businesses will suffer.

Area cities united five years ago to push deregulation back to Jan. 1, 2007, and Longview officials recently have started meeting with their old allies in East Texas — as well as new ones in the Texas Panhandle and the South Plains — to push it back even further.

East Texas is not ready for deregulation, officials say. Besides, they add, the area already has some of the lowest electric rates in the state.

"There's no question about it in my mind that if we move toward deregulation in these regions, electric costs are going to go up, and the purpose of deregulation was to make prices more competitive so a person could shop around and get the best deal and drive the costs down," said Gilmer City Manager Ron Stephens, whose City Council voted Tuesday to participate in the effort.

"There's not but one way prices can go (with deregulation), and that's up."

Kilgore commissioners on Tuesday also rejoined the coalition, called Cities Advocating Reasonable Deregulation.

Legislators in 2003 delayed deregulation in the Panhandle and the South Plains until 2007, but they didn't include East Texas. When the CARD coalition, aided by then-Sen. Bill Ratliff, R-Mount Pleasant, and Rep. Bryan Hughes, R-Mineola, couldn't "piggyback" on that legislation, they got the Texas Public Utilities Commission to approve an administrative delay instead.

Two years earlier, a pilot program to attract competition to East Texas failed because no one filed to compete with the existing utility company, AEP/SWEPCO. Today, local officials say there's still no interest in vying for the region's electricity customers because the rates remain so low.

Longview City Attorney Jim Finley noted that Longview's electric rates are cheaper than Tyler's deregulated rates. He said deregulating would also put Longview at an economic disadvantage when competing with nearby cities in Arkansas and Louisiana, states where utilities have not been deregulated.

Longview's low rates have helped lure big manufacturers such as Dana Corp., said Hunter Hilburn, the business development director for the Longview Economic Development Corp.

"I wouldn't necessarily say that that's something companies were seeking out and they come upon us, but it's definitely a factor when they begin to compare communities one against the other," he said.

Finley, Longview City Manager Rickey Childers, and the city's outside counsel will travel to Amarillo on Nov. 19 to pitch the coalition to officials from West Texas cities. Finley said Amarillo, Canyon, Lubbock, Perryton and Seminole leaders have expressed interest in joining the coalition, and he also has sought support from Sen. Kevin Eltife, R-Tyler, and other elected officials.

"We've talked to local representatives to let them know that we're interested in keeping electricity deregulated, and they've been most helpful," Finley said.

Finley said it's too soon to know how much the efforts will cost the city of Longview. He said the coalition plans to retain Jim Boyle, the same Austin-based lobbyist and legal counsel who worked for the group in 2002 and 2003.

The Longview City Council soon will be presented a resolution formally rejoining the coalition, giving officials plenty of time to gear up for the 2005 legislative session.

"We're just beginning the process right now," Finley said.

Attachment A,  
2 of 3

**Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales  
For the Month Ending June 30, 2004  
(MWh)**

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Monongahela Power Company	MON	30-Jun	2004	20097	17452	96201	133922
CRES Providers	MON	30-Jun	2004	0	0	0	0
Total Sales	MON	30-Jun	2004	20097	17452	96201	133922
EDU Share	MON	30-Jun	2004	100.00%	100.00%	100.00%	100.00%
Electric Choice Sales Switch Rates	MON	30-Jun	2004	0.00%	0.00%	0.00%	0.00%

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Ohio Edison Company	OEC	30-Jun	2004	458489	358035	642146	1473777
CRES Providers	OEC	30-Jun	2004	208978	267762	222268	697008
Total Sales	OEC	30-Jun	2004	665447	625797	864414	2170785
EDU Share	OEC	30-Jun	2004	68.90%	57.21%	74.29%	67.89%
Electric Choice Sales Switch Rates	OEC	30-Jun	2004	31.10%	42.79%	25.71%	32.11%

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Ohio Power Company	OP	30-Jun	2004	498109	480195	1260967	2242758
CRES Providers	OP	30-Jun	2004	0	0	0	0
Total Sales	OP	30-Jun	2004	498109	480195	1260967	2242758
EDU Share	OP	30-Jun	2004	100.00%	100.00%	100.00%	100.00%
Electric Choice Sales Switch Rates	OP	30-Jun	2004	0.00%	0.00%	0.00%	0.00%

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Toledo Edison Company	TE	30-Jun	2004	86183	109115	425289	627688
CRES Providers	TE	30-Jun	2004	79888	125113	15907	220888
Total Sales	TE	30-Jun	2004	166051	234228	441196	848576
EDU Share	TE	30-Jun	2004	51.90%	46.56%	96.39%	73.97%
Electric Choice Sales Switch Rates	TE	30-Jun	2004	48.10%	53.42%	3.61%	26.03%

Source: PUCO, Division of Market Monitoring & Assessment.

Note1: Total sales includes residential, commercial, industrial and other sales.

Note2: The switch rate calculation is intended to present the broadest possible picture of the state of retail electric competition in Ohio.

Appropriate calculations made for other purposes may be based on different data, and may yield different results.

# Attachment A, 3 of 3

## Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales For the Month Ending June 30, 2004 (MWh)

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Cleveland Electric Illuminating Company	CEI	30-Jun	2004	99438	191217	925689	1235879
CRES Providers	CEI	30-Jun	2004	288879	248942	134655	672476
Total Sales	CEI	30-Jun	2004	388317	440159	1060344	1908355
EDU Share	CEI	30-Jun	2004	25.61%	43.44%	87.30%	64.76%
Electric Choice Sales Switch Rates	CEI	30-Jun	2004	74.39%	56.56%	12.70%	35.24%

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
The Cincinnati Gas and Electric Company	CGE	30-Jun	2004	568657	391777	447034	1532782
CRES Providers	CGE	30-Jun	2004	32233	245294	84186	361713
Total Sales	CGE	30-Jun	2004	600890	637071	531220	1894495
EDU Share	CGE	30-Jun	2004	94.84%	61.50%	84.15%	80.91%
Electric Choice Sales Switch Rates	CGE	30-Jun	2004	5.36%	38.50%	15.85%	19.09%

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
Columbus Southern Power Company	CSP	30-Jun	2004	513696	633154	243769	1437999
CRES Providers	CSP	30-Jun	2004	0	46131	0	46131
Total Sales	CSP	30-Jun	2004	513696	679285	243769	1484130
EDU Share	CSP	30-Jun	2004	100.000%	93.209%	100.000%	96.892%
Electric Choice Sales Switch Rates	CSP	30-Jun	2004	0.000%	6.791%	0.000%	3.108%

Provider Name	EDU Service Area	Quarter Ending	Year	Residential Sales	Commercial Sales	Industrial Sales	Total Sales
The Dayton Power and Light Company	DPL	30-Jun	2004	396897	264417	135627	916993
CRES Providers	DPL	30-Jun	2004	0	57634	219702	283063
Total Sales	DPL	30-Jun	2004	396897	322251	355329	1200056
EDU Share	DPL	30-Jun	2004	100.00%	82.05%	38.17%	76.41%
Electric Choice Sales Switch Rates	DPL	30-Jun	2004	0.00%	17.95%	61.83%	23.59%

Source: PUCO, Division of Market Monitoring & Assessment.

Note1: Total sales includes residential, commercial, industrial and other sales.

Note2: The switch rate calculation is intended to present the broadest possible picture of the state of retail electric competition in Ohio.

Appropriate calculations made for other purposes may be based on different data, and may yield different results.

the same "region" as CSW's service territories in Arkansas, Louisiana, Oklahoma, and Texas, but we cannot find it in the record before us.

#### *Economies and Efficiencies*

[6] This brings us finally to Petitioners' arguments regarding PUHCA's requirement that a holding company's acquisition of securities or utility assets of another holding or public utility company produce net "economies and efficiencies." According to Petitioners, the Commission erred in accepting AEP and CSW's projections that the proposed merger will produce approximately \$2.1 billion in cost savings. We disagree. We owe considerable deference to the Commission's assertion that it "reviewed the assumptions and methodologies that underlie" the projections and found them "reasonable and consistent with ... precedent." Approval Order, 2000 SEC LEXIS 1227, at \*102. Moreover, Petitioners point to no evidence or expert testimony supporting

their assertion that the companies' calculations were flawed. Their unsupported claims that the projections are speculative and that the companies' FERC-mandated divestiture of generating capacity is neither economical nor efficient are insufficient to cast doubt on the Commission's contrary findings or even to raise a substantial question of fact warranting a hearing. *Cf. City of Holyoke Gas & Elec. Dep't v. SEC*, 972 F.2d 358, 365 (D.C. Cir. 1992) (noting that the Commission need only grant a hearing if "the ultimate decision will ... be enhanced or assisted by the receipt of [additional] evidence," and that we review for abuse of discretion a Commission decision not to hold a hearing).

### III.

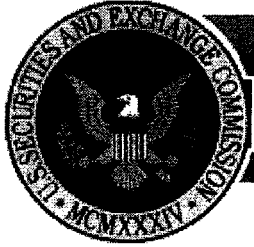
The Commission's order is vacated and this matter is remanded for further proceedings consistent with this opinion.

*So ordered.*



**Appendix A:** Map of the United States showing the CSW service territories in parts of Arkansas, Louisiana, Oklahoma, and Texas, and the AEP service territories in parts of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia, and West Virginia.

Attachment D



Home | Previous Page

U.S. Securities and Exchange Commission

**ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11616**

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
October 22, 2004**

---

 In the Matter of

AMERICAN ELECTRIC POWER  
COMPANY, INC.,

---

ORDER GRANTING MOTION TO INTERVENE  
AND PARTICIPATE ON A LIMITED BASIS

On August 30, 2004, the Securities and Exchange Commission (Commission) ordered a hearing on remand (Remand Order)<sup>1</sup> to determine whether the American Electric Power Company, Inc. (AEP), and Central and South West Corporation (CSW) systems are interconnected and operate in the same area or region, and hence satisfy the requirements of Sections 10(c)(1) and 11(b)(1) of the Public Utility Holding Company Act of 1935, as amended (Holding Co. Act), 15 U.S.C. §§ 79a, *et seq.*<sup>2</sup> The Remand Order directed any person seeking to intervene or participate on a limited basis to file a written notice with the undersigned in accordance "with the requirements of Rule 210(b) of the Commission's Rules of Practice," 17 C.F.R. § 201.210(b).

On October 1, 2004, Public Citizen, Inc. (Public Citizen), filed a Notice of Appearance and Motion to Intervene (Motion to Intervene) seeking to participate on a limited basis as a non-party participant in this remand proceeding pursuant to Rule 210(c) of the Commission's Rules of Practice. In its Motion to Intervene, Public Citizen argues that this proceeding is "a matter affecting [its] interests and [those of] its members. . . ." Public Citizen further contends that its interest in this matter "remains as substantial as it was over four years ago when it intervened in the initial merger proceeding and successfully sought intervener status."

On October 8, 2004, AEP filed an Objection to Public Citizen's Motion (Objection) arguing that Public Citizen has failed to meet the standards to participate as a party set forth in Rule 210(b), or on a limited basis pursuant to Rule 210(c). In a footnote to its Objection, AEP states that Public Citizen "was one of eleven named entities on one request to intervene (out of nine separately filed requests)." It also represents that despite several rounds of briefing, "Public Citizen did not participate apart

from filing its initial request to intervene." (Opposition at 2, n.2.) The Commission's Order Authorizing Acquisition states that Public Citizen was party to a "joint submission opposing the Merger," but did not request a hearing. (Order Authorizing Acquisition at 1942.)

Public Citizen filed its Response to the Objection on October 18, 2004 (Response), wherein it reasserts that it participated in the initial proceeding and its continued participation "will be in the public interest and for the protection of investors and consumers." (Response at 8.) The Response also seeks to admonish AEP's counsel for misstating the Commission's Rules of Practice.

Public Citizen participated in the initial proceeding in this matter, but only by joining in a submission opposing the merger. The Commission described Public Citizen as a non-profit research, lobbying, and litigation organization whose members are located throughout the United States, including states served by AEP and CSW. See AEP, 72 SEC Docket at 1941-42 & n.17. There is no indication that Public Citizen's status has changed such that it should be excluded from this remand proceeding.

ACCORDINGLY, IT IS ORDERED that Public Citizen's Motion to Intervene and participate on a limited basis is hereby GRANTED.

IT IS FURTHER ORDERED that Public Citizen's participation, including participation in scheduled pre-hearing exchanges and meetings, shall be limited to non-duplicative involvement including the submission of any briefs, exhibits, testimony or other matters germane to the issues on remand.

IT IS FURTHER ORDERED that Public Citizen's request to admonish AEP's counsel for misstating the Commission's Rules of Practice is hereby DENIED.

---

Robert G. Mahony  
Administrative Law Judge

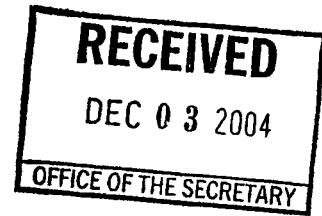
### Endnotes

---

<sup>1</sup> The Remand Order was in response to the decision of the United States Court of Appeals for the District of Columbia in *National Rural Electric Cooperative Association v. SEC*, 276 F.3d 609 (D.C. Cir. 2002), on appeal from the Commission's Order Authorizing Acquisition of Registered Holding Company and Related Transactions; Approving Amended Service Agreements, and Denying Requests for Hearing (Order Authorizing Acquisition), *American Electric Power Co. and Central and South West Corp.*, 72 SEC Docket 1931 (June 14, 2000).

<sup>2</sup> See Holding Co. Act Release No. 35-27886.

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



\_\_\_\_\_  
In the Matter of )

AMERICAN ELECTRIC POWER COMPANY, INC. ) Administrative Proceeding  
File No. 3-11616  
)  
\_\_\_\_\_)

**MOTION FOR CLARIFICATION  
OR, ALTERNATIVELY,  
REQUEST TO INTERVENE AS FULL PARTY**

By Order dated October 22, 2004, Presiding Administrative Law Judge Robert G. Mahoney granted Public Citizen, Inc.'s Motion to Intervene to participate in this proceeding on a limited basis.

Although Public Citizen's counsel intended, but apparently failed, to move for Public Citizen to intervene as a full party, limited party participation is not necessarily unacceptable as long as Public Citizen has the right to present witnesses, cross-examine the witnesses of other parties, brief all issues, and the right to appeal all issues to both the Commission and to the Courts.

Counsel for Public Citizen therefore respectfully requests the Presiding Administrative Law Judge to clarify whether or not Public Citizen has those rights as a limited participant under the Commission's rules and the Judge's order. If not, Public Citizen requests full party status herein.<sup>1</sup>

<sup>1</sup> The Scheduling Order herein has designated December 3, 2004, as the date for seeking leave to participate.



**Public Citizen's Interests as a Representative of Consumers, Investors and the Public Interest Support its Intervention as a Full Party Participant.**

As the parties herein are now well aware, the Commission has recently changed its Rules of Practice regarding interventions to eliminate the provision in Section 210(c)(1) that *formerly* required that no person would be admitted as a party unless it was determined that leave to participate as a limited participant would be "inadequate." As a result of this change in the rules, precedent under the prior rules denying intervention as a party because limited participation was "adequate" is clearly no longer relevant, and the Commission clearly intends by the change in the rules that party intervention should be ready more liberally now than under the old rules.

Public Citizen has demonstrated a clear interest in this proceeding as the representative of its members who are consumers of AEP's utility services. As stated previously, Public Citizen has more than 160,000 members nationwide, including more than 24,871 members in the states of Texas, Oklahoma, Indiana, Michigan, Ohio, Kentucky, West Virginia, Tennessee and Virginia, the states in which AEP or CSW currently own operating utilities. In addition, Public Citizen's participation in this proceeding as a strong proponent of the enforcement of PUHCA and as a representative of its members as consumers, investors and the public interest nationwide, will be in the public interest and for the protection of investors and consumers.

Moreover, as the article "*AEP CEO interested in expanding within footprint*" (Attachment A) demonstrates, AEP plans to expand into 11 "Midwestern and Southern States" that it claims are within the "AEP footprint." The article states that Mr. Morris told Reuters that AEP would, for example, be very interested in buying major utility

systems such as Dayton Power & Light and Louisville Gas & Electric Company. This means that many more of Public Citizen's members could become consumers of AEP's and CSW's utility services, depending on the outcome of this case as to what the proper "footprint" of AEP's system will be.

And, as Public Citizen has previously shown, even the limited exemptions for "merchant plants" from PUHCA (Exempt Wholesale Generators or EWGs, under section 32 of PUHCA) have resulted in the same types of economic problems from piling debt on utility facilities that resulted in 53 utility holding company bankruptcies and 23 utility holding company bank loan defaults from 1929 to 1936. As Attachment B, *"Private Equity Players Search for Power Generation Asset Bargains,"* shows, investors are buying up "bargain" power plants, while planning to make "significant returns" when electric demand increases (and electric consumers are at the plant owner's mercy if they want to keep the lights on, as in California from 2000-2001.) The public interest, therefore, is in great need of strong enforcement of PUHCA's remaining provisions, or we may all experience what it is like to live through an economic depression (such as the one from which California is still trying to recover.)


As previously argued, no other party can adequately address Public Citizen's interest as the representative of retail consumers in the states served by, or that may be served by, AEP and CSW.

For the reasons stated above, Public Citizen believes that its participation as a full party will be in the public interest and for the protection of investors and consumers.

**Conclusion**

Counsel for Public Citizen, Inc. respectfully requests that the Presiding Administrative Law Judge to either grant the motion for clarification and find that limited party status will give Public Citizen the right to present witnesses, cross-examine other party's witnesses, brief all issues in the case, and have the right to appeal all issues to the Commission or to the courts, or, alternatively, to grant Public Citizen full party status.

Respectfully submitted,


  
Lynn N. Hargis  
Counsel for Public Citizen, Inc.

Attachments

Cc: Presiding Administrative Law Judge Mahoney  
Service List

Attachment A



 Print this article

Close This Window

## AEP CEO interested in expanding within footprint

Wed Dec 1, 2004 12:16 PM ET

By Michael Erman

NEW YORK, Dec 1 (Reuters) - American Electric Power Co. Inc.'s (AEP.N: Quote, Profile, Research) chief executive on Wednesday said the company was interested in acquisitions to expand in the 11 U.S. Midwestern and Southern states where it already has business.

Michael Morris told Reuters that AEP, one of the largest U.S. power producers, would be very interested in buying Dayton Power & Light Co., a unit of DPL Inc. (DPL.N: Quote, Profile, Research) , and E.ON AG's (EONG.DE: Quote, Profile, Research) , Louisville Gas & Electric, if either company were made available for sale.

"If you look at the AEP footprint, in most jurisdictions, save Ohio and West Virginia, we're really a small player," Morris said in an interview. "We'd love to have the opportunity to fill in our own footprint."

Morris said AEP would be interested in an acquisition only if it could confine the regulatory proceedings for the deal to a single state.

"What has happened with companies like ours is every time we want to do something, all 11 state regulators get up and say 'What do we get out of this?'" Morris said. "Before we could get into (a deal), we would really have to have some assurance that we could box it in."

Shares of AEP fell 43 cents, or 1.3 percent, at midday on the New York Stock Exchange Wednesday.

(Additional reporting by Caroline Humer)

---

All rights reserved. Users may download and print extracts of content from this website for their own personal and non-commercial use only. Republication or redistribution of Reuters content, including by framing or similar means, is expressly prohibited without the prior written consent of Reuters. Reuters and the Reuters sphere logo are registered trademarks or trademarks of the Reuters group of companies around the world.

© Reuters 2004

Close This Window

Attachment B

## **Private Equity Players Search for Power Generation Asset Bargains**

Wednesday December 1, 2:29 pm ET

Weak Market Conditions and High Discount Rates Offer Opportunity and Risk

**SACRAMENTO, CA--(MARKET WIRE)--Dec 1, 2004 --** The recent wave of asset purchases within the merchant generation sector by private equity firms are at dramatically higher discount rates than those previously seen within the sector and are betting on a recovery in the electric power market according to the PowerGeneration Bluebook, recently released by Global Energy Decisions, LLC (Global Energy).

"These Private Equity players are betting on improving market conditions alleviating the current lack of demand for electricity -- its all about timing, if the market recovers as expected they will see significant returns for their investors," said Gary Hunt, President, Global Energy Advisors, a Global Energy business unit.

So are market prices for wholesale electricity recovering? Not yet is the message from the Power Generation Bluebook. While coal and nuclear power generation asset values have increased, gas-fired combined cycle power plant prices continued to decline between 2003 and 2004 with overall combined cycle values falling by 11%.

"A delay in recovery of a couple of years will destroy their returns and result in the same assets being sold in a few years time," Hunt said.

With significant uncertainty still surrounding asset valuations the recent sales confirm that the private equity players are buying merchant generating assets despite project discounting at real, pre-tax rates of 20%. This compares with utility rates closer to 12%.

"This differential reflects the significant risk the private equity players are taking in buying merchant assets in locations where limited liquidity and limited transmission means that there may be no natural home for the power in the current market," according to Grant Thain, Global Energy's Vice President of Planning and Risk.

The Power Generation Bluebook is a comprehensive study that values 5000 generation units across North America, providing stochastic analysis of the expected asset value for every power generator over 50MW for use as a portfolio benchmark service. A fast, cost-effective way to value an individual plant or an entire energy portfolio against market prices, The Power Generation BlueBook provides standard metrics that matter: expected value, deterministic value, median value and the underlying "Cash Flow at Risk" parameters essential to decisions about asset transactions.

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11616

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
December 10, 2004

---

In the Matter of

AMERICAN ELECTRIC POWER  
COMPANY, INC.

---

:  
:  
:  
:  
:

ORDER ON MOTION

On August 30, 2004, the Securities and Exchange Commission (Commission) ordered a hearing on remand (Remand Order) in this matter. See Am. Elec. Power Co., Holding Co. Act Release No. 27886. On October 22, 2004, the undersigned granted Public Citizen, Inc.'s (Public Citizen), motion to intervene and participate in this proceeding on a limited basis as a non-party participant pursuant to Rule 210(c) of the Commission's Rules of Practice. Such participation was limited to non-duplicative involvement including the submission of any briefs, exhibits, testimony or other matters germane to the issues on remand.

On December 6, 2004, Public Citizen filed a Motion for Clarification or, Alternatively, Request to Intervene as a Full Party (Motion). Public Citizen states therein that its counsel had originally intended, when it moved to intervene in the first place, to participate in this proceeding as a full party under Rule 210(b) of the Commission's Rules of Practice, rather than on a limited basis, as was granted. Public Citizen now requests either (i) it be granted full-party status; or (ii) its participation be clarified to include "the right to present witnesses, cross-examine the witnesses of other parties, brief all issues, and the right to appeal all issues to both the Commission and to the Courts." Motion at 1.

On December 9, 2004, American Electric Power Company, Inc. (AEP), filed an opposition to Public Citizen's Motion (Opposition) arguing in part that the undersigned's October 22 Order requires no additional clarification, and further that Public Citizen has failed to offer any new evidence "that merits elevating its involvement above that of a non-party participant." Opposition at 1. AEP states that by Public Citizen's own admission, Public Citizen in its Motion is merely restating "the same argument [it] 'previously' made" to the undersigned for consideration. Opposition at 3.

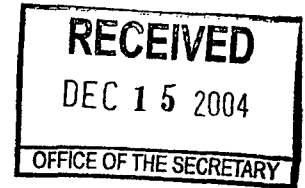
IT IS ORDERED that Public Citizen's request to participate in this proceeding as a full party is DENIED. Public Citizen has not established a change in circumstance nor has it presented any new evidence to necessitate a change in its participation status. Public Citizen's participation will remain subject to the terms and limitations set forth in the October 22 Order.

Cross-examination at the hearing will be reserved to the parties. Any review of an initial decision in this matter is properly directed to the Commission and the applicable appellate jurisdiction at the appropriate time. See 17 C.F.R. §§ 201.410, .411; Section 24 of the Public Utility Holding Company Act of 1935.

IT IS SO ORDERED.

---

Robert G. Mahony  
Administrative Law Judge



**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

\_\_\_\_\_  
 In the Matter of )

AMERICAN ELECTRIC POWER COMPANY, INC. ) Administrative Proceeding  
 ) File No. 3-11616  
 )  
 )  
 \_\_\_\_\_)

**REQUEST FOR CERTIFICATION TO COMMISSION**  
**OF ORDER DENYING PUBLIC CITIZEN, INC.**  
**FULL PARTY STATUS**  
**AND MOTION FOR STAY PENDING DECISION**

Public Citizen Inc. respectfully requests the Presiding Administrative Law Judge, pursuant to Commission Rules of Practice 400 and 401, to certify or certificate to the Commission for interlocutory review his December 10, 2004, order denying Public Citizen, Inc., full party status in the above-captioned proceeding, and to stay the hearing proceedings pending a Commission decision on Public Citizen's status.

In his first order issued October 22, the Presiding Administrative Law Judge stated that Public Citizen was seeking limited participation status and granted our motion for such status. Since he was unaware that Public Citizen intended to seek full party status, he had no occasion to, and did not,



decide whether or not we were entitled to it in the first order. As a consequence, the fact that Public Citizen has not shown "a change in circumstance" since it's first request is irrelevant, since the Presiding Administrative Law Judge had never previously denied Public Citizen full party status or given a reason for doing so, but had simply granted an apparent request for limited party status. The second order similarly gives no reason why Public Citizen should not be a full party herein, other than that it has shown no "new evidence" that it deserves full party status. Since, as noted above, Public Citizen has never been told a reason why it should *not* be admitted as a full party on the basis of its "old evidence," Public Citizen does not know what such "new evidence" would be.

The Commissions Rules of Practice state at Rule 210(b)(i):

"[I]n a proceeding under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding."

And, as we have discussed several times in this proceeding, there is *no longer* a requirement in the rules that an applicant be denied party status unless limited party status is inadequate.

Public Citizen has repeatedly stated that it has members that are consumers of electric service in AEP's subsidiary utilities' service areas that are affected by the merger, and no one has challenged this fact. Public Citizen has repeatedly stated that it has an interest in the enforcement of the Public Utility Holding Company Act of 1935 as well, and no one has challenged this fact. Public Citizen is the only party other than the applicant, American Electric Power, that has offered to submit expert witnesses and testimony, and no one has challenged this fact. Public Citizen has stated that its participation will be in the public interest and in the interest of consumers and investors, and no one has submitted any reason to show why it will not be. Thus, Public Citizen is at a loss as to why the Presiding Administrative Law Judge, without explanation other than "no changed circumstances," has denied Public Citizen full party status. If the standard is indeed whether or not anything has changed, Public Citizen notes that there were no limitations on its status in the first phase of this proceeding, so that "no changed circumstances" should result in Public Citizen receiving full party status as it had in the first proceeding.

Public Citizen believes that reasoned decision-making is required for decisions before the Commission as well as before the Courts, and that no reason has been given for denying Public Citizen full party status herein.

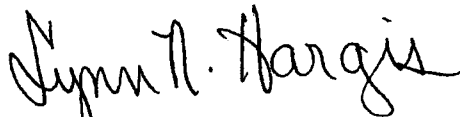
Public Citizen also believes that the loss of the right to cross examine the witnesses of other parties—when they will undoubtedly be given the right to cross-examine the witnesses presented by Public Citizen—is a substantial denial of due process to Public Citizen that it wishes to appeal to the Commission on an interlocutory basis. Obviously, appeal at the time of the initial decision will be too late, since Public Citizen will have already lost the opportunity to cross examine witnesses, etc. Public Citizen will therefore suffer irrevocable harm if the hearing is not stayed pursuant to Rule 401 pending the decision on its rights during the hearing.

Pursuant to Rule 400, Public Citizen submits that the denial of its rights to cross examine witnesses and to otherwise participate in this proceeding as a full party in interest, without explanation, is arbitrary and capricious, substantial and final, and that avoiding a possible court appeal regarding this controlling question of law as to Public Citizen's rights during the hearing may materially advance the completion of this proceeding.

**Conclusion**

Public Citizen therefore asks the Presiding Administrative Law Judge to either reconsider his decision or to certificate the question to the Commission on an interlocutory basis under Rule 400, and that, pursuant to Rule 401, the hearing be stayed pending a Commission decision on this question.

Respectfully submitted,

A handwritten signature in black ink, reading "Lynn N. Hargis". The signature is written in a cursive, flowing style.

Lynn N. Hargis  
Counsel for Public Citizen, Inc.

Cc: Presiding Administrative Law Judge Mahoney  
Service List

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11616

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
December 22, 2004

---

In the Matter of	:	
	:	ORDER DENYING REQUEST
AMERICAN ELECTRIC POWER	:	FOR RECONSIDERATION, FOR
COMPANY, INC.	:	CERTIFICATION TO THE COMMISSION
	:	AND A STAY OF THE PROCEEDING

---

On August 30, 2004, the Securities and Exchange Commission (Commission) ordered a hearing on remand in this matter (Remand Order), pursuant to Section 19 of the Public Utility Holding Company Act of 1935 (PUHCA) and in accordance with the Commission's Rules of Practice. See Am. Elec. Power Co., Holding Co. Act Release No. 27886. The hearing is scheduled to commence in Washington, D.C., on January 10, 2005. The Remand Order also provided that an initial decision be issued no later than 300 days from the date of service of the Remand Order.

**REQUEST FOR CERTIFICATION**

On October 22, 2004, Public Citizen, Inc. (Public Citizen), was granted leave to participate in this proceeding on a limited basis as a non-party participant, pursuant to Rule 210(c) of the Commission's Rules of Practice. On December 6, 2004, Public Citizen filed a Motion for Clarification or, Alternatively, Request to Intervene as Full Party (Motion for Clarification). By Order dated December 10, 2004 (December 10 Order), I denied Public Citizen's Motion for Clarification and declined to elevate its participation status in the proceeding from that of a non-party participant, under Rule 210(c), to that of a full party, under Rule 210(b). The December 10 Order also stated that cross examination of witnesses at the hearing would be reserved to the parties.

On December 14, 2004, Public Citizen filed a timely Request for Certification to Commission of Order Denying Public Citizen Full Party Status and Motion for Stay Pending Decision (Certification Request), pursuant to Rules 400 and 401 of the Commission's Rules of Practice. The Certification Request asks that I either: (i) reconsider my December 10 Order; or (ii) certify the December 10 Order to the Commission on an interlocutory basis and stay the proceeding pending the Commission's interlocutory review. On December 21, 2004, American Electric Power Company, Inc. (AEP), filed an opposition to the Certification Request (Opposition).

Petitions for interlocutory review are disfavored, and the Commission grants petitions to review an administrative law judge's ruling, prior to Commission consideration of the initial decision, only in "extraordinary circumstances." 17 C.F.R. § 201.400(a). Rule 400(c)(2) of the Commission's Rules of Practice permits an administrative law judge to certify a ruling to the Commission for interlocutory review. The administrative law judge, however, shall not certify a ruling to the Commission unless:

- (i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and
- (ii) an immediate review of the order may materially advance the completion of the proceeding.

17 C.F.R. § 201.400(c).

In applying Rule 400(c) to its Certification Request, Public Citizen states "that the denial of its rights to cross examine witnesses and to otherwise participate in this proceeding as a full party in interest, without explanation, is arbitrary and capricious, substantial and final, and that avoiding a possible court appeal regarding this controlling question of law as to Public Citizen's rights during the hearing may materially advance the completion of this proceeding." (Certification Request at 4.) It argues that interlocutory review of the December 10 Order is appropriate because the loss of its right to cross examine witnesses at the hearing "is a substantial denial of due process" and that an "appeal at the time of the initial decision will be too late." (*Id.*) Accordingly, it urges a stay of the proceeding pending Commission review.

AEP opposes the Certification Request because there is no controlling question of law and immediate review will not materially advance the completion of the proceeding. AEP asserts that Public Citizen "does not qualify for intervention as of right under Rule 210(b)(2)" of the Commission's Rules of Practice, and the undersigned "properly exercised his discretion" under Rule 210(b) to determine the scope of Public Citizen's participation in this proceeding. (Opposition at 1-2.) AEP argues that limitation of Public Citizen's participation was justified because it did not actively participate in the initial proceeding in this matter, declining to request even a hearing, and that Public Citizen has yet to offer a reason for "expanding its participation [now] in this second, narrower round of Commission Review," or even sufficiently state its interests in the matter. (Opposition at 2.) AEP, in concluding, states that granting the Certification Request and staying the proceeding will create unnecessary delay, which can only be attributed to Public Citizen's own inaction and its ambiguously drafted October 1, 2004, Notice of Appearance and Motion to Intervene.

## DISCUSSION

Public Citizen has failed to meet the basic standards set forth in Rule 400(c), as it has not convinced me that (1) the December 10 Order presents a controlling question of law as to which there is a substantial ground for a difference of opinion; and (2) immediate interlocutory review will materially advance the completion of the proceeding. Public Citizen states on several occasions that my December 10 Order gave insufficient reasons for declining to elevate its

participation status to a full party. In support of its position for full-party status under 210(b) of the Commission's Rules of Practice, Public Citizen repeatedly cites that the Commission recently changed its Rules of Practice regarding interventions, "no longer [requiring] in the rules that an applicant be denied party status unless limited party status is inadequate." (Certification Request at 3) (emphasis in original.) Public Citizen concludes that "[a]s a result of this change in the rules, precedent under the prior rules denying intervention as a party because limited participation was 'adequate' is clearly no longer relevant, and the Commission clearly intends by the change in the rules that party intervention should be ready [sic] more liberally now than under the old rules." (Motion for Clarification at 2.)

Notwithstanding the change to certain preliminary language in Rule 210, the use of the permissive auxiliary verb "may" in both Section 19 of PUHCA and current Rule 210(b)(1) grants the administrative law judge the authority to admit parties within his or her discretion:

In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers.

Section 19 of PUHCA (emphasis added).

- (i) in a proceeding under PUHCA, any representative of interested consumers or security holders, or any person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

17 C.F.R. § 201.210(b)(1)(i) (emphasis added).

Public Citizen has not cited to any Commission comment, interpretative release, proposed rule, opinion, or other controlling precedent that explicitly supports its position that Rule 210(b) should be more liberally construed.<sup>1</sup> As it stands, Public Citizen's interpretation would effectively make Rule 210(b), together with PUHCA Section 19, an automatic admission for third parties, and would abandon the permissive construction of the governing statute and Commission Rule -- a permissive construction that did not change with the recent amendments to the Rules of Practice. Because Public Citizen clearly falls within the latter group of discretionary parties described in Section 19 of PUHCA, there is no controlling question of law that warrants certification of the December 10 Order.

---

<sup>1</sup> No specific reason for Rule 210(b)'s change was cited in the recent amendments to the Commission's Rules of Practice. 82 SEC Docket 1744, 1755 (Mar. 19, 2004).

Within my discretion under Rules 111 and 210(b) and PUHCA Section 19, I allowed Public Citizen on October 22 to participate in this proceeding on a limited basis as a non-party participant, as it had requested and over the objection of AEP. After the October 22 Order, Public Citizen chose to wait more than six weeks from the date of that Order to December 6 to notify this Office in a three-and-a-half page motion that its counsel had originally "intended, but apparently failed, to move [on October 22] for Public Citizen to intervene as a full party." (Motion for Clarification at 1.) During this six-week period, a prehearing technical conference was held and several party submissions were made, including position statements, witness lists, documents to be introduced at the hearing, and information regarding persons to be called as expert witnesses. Public Citizen participated in these procedural matters as a non-party but remained silent throughout while knowing that it "intended" to intervene as a full party. Within my discretion under the applicable statutes, I then declined, under the circumstances, to elevate Public Citizen's status to that of a full party.<sup>2</sup>

Further, I also deny the Certification Request and request for stay because it is clear that an immediate review of the December 10 Order will not materially advance the completion of this proceeding. Public Citizen is not among the compulsory parties discussed specifically in PUHCA Section 19. In the initial proceeding in this matter, its participation was on a limited basis and only consisted of joining in a submission opposing the AEP merger. See AEP, 72 SEC Docket 1931, 1941-42 & n.17 (June 14, 2000). Now on remand, Public Citizen has been admitted as a non-party participant, as of October 22. Pursuant to the October 22 Order, Public Citizen has been allowed to submit filings for my consideration and will be afforded an opportunity to participate in a limited capacity at the hearing. Such participation will include submissions of briefs and exhibits, and the proffering of testimony germane to the issues. Immediate interlocutory review by the Commission, thus, is not necessary and will not materially advance the completion of this proceeding.

### **RULING**

Based on the foregoing, Public Citizen's Certification Request, including requests for reconsideration and a stay of the proceeding, is hereby DENIED.

---

Robert G. Mahony  
Administrative Law Judge

---

<sup>2</sup> Additional authority that allows for limitations on party and non-party participation in cross examination may be found in Commission Rule 210(f), applying to all Rule 210 parties, and Commission Rule 326, regarding an administrative law judge's authority to determine scope of cross examination, if any. 17 C.F.R. §§ 201.210(f), .326.





**U.S. Securities and Exchange Commission**

**ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11616**

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
October 6, 2004**

---

In the Matter of

AMERICAN ELECTRIC POWER  
COMPANY, INC.

SCHEDULING ORDER

---

On August 30, 2004, the Securities and Exchange Commission (Commission) ordered a hearing on remand from the United States Court of Appeals for the District of Columbia<sup>1</sup> for the purpose of determining whether the American Electric Power Company, Inc. (AEP), and Central and South West Corporation (CSW) systems are interconnected and operate in the same area or region, and hence satisfy the requirements of Sections 10 (c)(1) and 11(b)(1) of the Public Utility Holding Company Act of 1935, as amended (Holding Co. Act), 15 U.S.C. §§79a, et seq.<sup>2</sup> On October 4, 2004, a telephonic prehearing conference was held at which the parties agreed to a scheduling order for this matter.

Accordingly, IT IS ORDERED, pursuant to Rule 222(a) of the Commission's Rules of Practice, that AEP shall submit, by November 15, 2004, an outline or narrative summary of its case supporting its application for approval of the acquisition of CSW, including the nature of the evidence and the legal theories upon which it will rely;

IT IS FURTHER ORDERED, pursuant to Rule 222(a) of the Commission's Rules of Practice, that each other party shall submit, by November 30, 2004, a statement of its position on AEP's application, and an outline or narrative summary of the evidence and legal theories upon which it will rely to support its position;

IT IS FURTHER ORDERED that, by December 3, 2004, each party shall submit its list of witnesses, copies and a list of documents it intends to introduce at the hearing, and the information required by Rule 222(b) of the Commission's Rules of Practice with regard to any person that party intends to call as an expert witness at the hearing;

IT IS FURTHER ORDERED that any person seeking leave to participate may do so, pursuant to Rule 210 of the Commission's Rules of Practice, by December 3, 2004;

IT IS FURTHER ORDERED that, by December 7, 2004, AEP shall submit written direct testimony of all its witnesses;

IT IS FURTHER ORDERED that, on December 10, 2004, an informal technical conference will be held in the Commission's Headquarters Offices, 450 Fifth Street, Room 1C50, N.W., Washington, D.C. 20549;

IT IS FURTHER ORDERED that, by December 15, 2004, each other party shall submit the written direct testimony of all its witnesses;

IT IS FURTHER ORDERED that, by December 17, 2004, each party shall submit a statement identifying each of the witnesses of any other party that party intends to cross-examine;

IT IS FURTHER ORDERED that a prehearing conference, for the purposes specified in Rule 221 of the Commission's Rules of Practice and for any other appropriate purpose, shall be held commencing at 9:00 a.m. EST, on January 5, 2005, in the Commission's Headquarters Offices, 450 Fifth Street, Room 1C50, N.W., Washington, D.C. 20549;

IT IS FURTHER ORDERED that a hearing in this matter will commence on January 10, 2005, at a location and time to be set in a future order;

IT IS FURTHER ORDERED that, by February 21, 2005, each party shall file proposed findings and conclusions and supporting briefs, pursuant to Rule 340 of the Commission's Rules of Practice; and

IT IS FURTHER ORDERED that each party may file a reply brief by March 7, 2005.

---

Robert G. Mahony  
Administrative Law Judge

## **Endnotes**

---

<sup>1</sup> See *Nat'l Rural Elec. Coop. Ass'n v. SEC*, 276 F.3d 609 (D.C. Cir. 2002).

<sup>2</sup> See Holding Co. Act Release No. 35-27886

<http://www.sec.gov/divisions/investment/opur/filing/3-11616-5.htm>

---

5/22/03

**John Andrew Casazza**

President

*American Education Institute*

8208 Donset Drive

Springfield, Virginia 22152

Phone/FAX: (703) 569-3579

E-mail: ameredinst@aol.com

Personal Web site: [www.obligationsneeded.com](http://www.obligationsneeded.com)**Summary**

A highly-skilled professional with an international reputation in the energy field, Jack Casazza is versed in the technical, institutional, and regulatory aspects of energy systems. Formerly a corporate officer for a large utility in the United States and an executive with major consulting firms, he has been responsible for forecasting; DSM studies; integrated system planning; developing generation and transmission plans; economic and financial evaluations; intercompany contract negotiations; rate and cost of service studies; merger studies and analyses; strategic planning; organizational planning; pooling and coordination studies; system reliability standard establishment and evaluations; cogeneration analysis; research programs; and applications of new technology. He has been responsible for consulting projects in the USA, South America, Canada, Africa, Asia, Australia, and Europe.

He currently devotes most of his time to the American Education Institute, a not-for-profit organization that he founded and to which he has made major financial contributions. He also is an IEEE Distinguished Lecturer, explaining world wide the impact of new legislation and regulation on the reliability and cost of electric service.

He has testified extensively before Federal and State regulatory, legislative, and judicial bodies on many issues of national and local importance. He continues to be involved in national and international activities related to future electric system developments and electric power policy.

**Professional Experience**

1997 - Present	Outside Director - Georgia Systems Operation Company
1994 - Present	President - American Education Institute
1998 - 2000	Member Executive Committee of the New York State Reliability Council
1997 - 1999	Member - Board of Adjustment City of Chicago - Commonwealth Edison Dispute

1979 - 1998	CSA Energy Consultants
1979-1991	President
1991-1997	Chairman of the Board
1997-1998	Member of the Board
1977 - 1979	Vice President - Stone & Webster Management Consultants, Inc.
1946 - 1977	Public Service Electric and Gas Company - PSE&G
1974-1977	Vice President - Planning and Research (Electric & Gas)
1971-1974	General Manager - Planning and Research (Electric)
1968-1971	System Planning and Development Engineer (Electric)
1946-1968	Various Engineering Assignments (Electric)

### ***Education***

1941 - 1943	Cooper Union School of Engineering (New York, New York)
1943 - 1945	B.E.E. - Cornell University (Ithaca, New York)
1950 - 1951	Power Systems Engineering Course - General Electric Co.
1970 - 1971	Management Course - American Management Association

### ***Awards/Honors***

#### **Institute of Electrical and Electronics Engineers (IEEE)**

- United States Activities Board Professional - Leadership Award - 1992 - for outstanding leadership activities
- Herman Halperin Electric Transmission and Distribution Award - 1990 - for contributions to the development of electric transmission systems
- United States Activities Board Citation of Honor - 1985 - for contributions to the electric engineering profession
- Fellow - 1975 - for development of new technical and economic analyses methods
- Life Fellow - 1988

Conférence Internationale des Grands Réseaux Électriques a Haute Tension (Cigré) (International Conference on Large High Voltage Electric Systems)

- Philip Sporn Award - 1994 - for career contributions to the advancement of the concept of system integration in the theory, design, and/or operation of large, high-voltage electric systems in the United States
- Atwood Associate - 1986 - for contributions to Cigré
- Special Citation - 1982 - for six years of service as Chairman of the U.S. Technical Committee of Cigré

Listed in *Who's Who*

Listed in *Who's Who in Engineering*

### ***Professional Affiliations***

#### ***National Research Council***

1990 - 1994          Energy Engineering Board

#### ***Institute of Electrical and Electronics Engineers (IEEE)***

1975 - Present      Energy Policy Committee (Chairman 1981 and 1982)

1999                  Co-editor - IEEE Book - "The Evolution of Electric Power Transmission: Selected Readings"

1986 - 1994          Pension Committee

1984 - 1985          Individual Member Benefits Committee

1983 - 1985          Environmental Quality Committee (Chairman 1984-85)

1983 - 1985          United States Activities Board

1979 - 1985          Testimony before Congressional Committees on behalf of IEEE

1975 - 1979          Editorial Board - *Spectrum*

1970 - 1974          Energy Development Subcommittee

1943 - Present      Power Engineering Society

*Conférence Internationale des Grands Réseaux  
Électriques a Haute Tension (Cigré)*

1994 - 2000	United States Representative to Working Group 37.20 - Impact of Regulation on Planning and Operation
1990 - 1994	United States Representation to Working Group 37.15 - Competition and Coordination
1989 - 1993	International Chairman and United States Representation to Working Group 37.09 - Links Between Power System Planners and Decision Makers in the Energy Policy Area
1986 - 1992	Member, Executive Committee, U.S. National Committee
1978 - 1984	U.S. Expert Advisor, Study Committee 41 - Future of Transmission Systems
1974 - 1993	Member, U.S. Technical Committee (Chairman, 1974 - 1981)
1974 - 1981	Chairman of the U.S. Technical Committee and Vice President, U.S. National Committee
1964 - Present	U.S. Expert Advisor, Study Committee 32, (later SC C- 1) - System Planning and Operations

*Edison Electric Institute (EEI)*

1964 - 1974	System Planning Committee (Chairman 1971-1973)
1968 - 1971	Chairman, System Control and Protection Subcommittee

*Other*

1994 - 2000	Editorial Advisory Board - <i>Electric Light &amp; Power</i>
1983 - 1995	World Energy Conference - U.S. Energy Association (Member - Board of Directors - 1986-1989)
1986	American Association of Engineering Societies - Commission on International Affairs
1977	Treasurer, New Jersey Energy Research Institute

1977	U.S. Department of Energy (DOE) - Fusion Power Reactor Senior Review Committee
1976 - 1977	Electric Power Research Institute (EPRI) - Research Advisory Committee
1976 - 1977	Gas Research Institute (GRI) - Technical Advisory Committee
1975 - 1977	New Jersey Governor's Advisory Panel on Solar Energy
1975	Chairman, Hydrogen Seminar 9th World Energy Conference
1974 - 1977	New Jersey Public Utility Commission's Advisory Committee on Cogeneration
1973 - 1980	United State of America/Union of Soviet Socialist Republic Joint Commission on Scientific and Technical Cooperation - Electric Power System Planning and Dispatching Group
1973 - 1979	Public Trustee, New Jersey Marine Sciences Consortium
1973 - 1975	North American Electric Reliability Council Interregional Review Subcommittee
1953 - Present	Licensed Professional Engineer of New Jersey

### ***Books Authored/Coauthored***

***Understanding Electric Power Systems - an overview of the technology and the marketplace, IEEE/Wiley Press October 2003***

***Sham? Shame! - Inside the Electric Power Industry, Amazon.com, July 2001***

***The Development of Electric Power Transmission, The Role Played by Technology, Institutions, and People, The Institute of Electrical and Electronics Engineers, Inc., October 1993***

***How New Competitive Mechanisms Can Affect Electric System Reliability - The Vital Message of the West Coast Blackouts, McGraw-Hill Global Electric Power Information Network, May 1997***

*The Evolution of Power Transmission Under Deregulation - Selected Readings,*  
The Institute of Electrical and Electronic Engineers, Inc., January 2000

***Publications (authored or co-authored)***

- "What Impact Did Deregulation Have on the Northeast Blackout" Light Magazine UWAU 9/10/03
- "Engineering, Ethics and Electricity", IEEE Spectrum-Speak Out Column 7/03
- "The Six Networks and Electric Power Policy, Engineers, Economists and Ethics", IEEE Summer Power Meeting, Toronto Canada, July 15, 2003
- "Ethical Responsibility - Are the PES Programs and Activities Up to Code", In My View, IEEE Power and Energy, March/April 2003
- "Computational Tools for the Future", International Conference on Power Systems Operation And Planning, 2002, Abuja, Nigeria
- "Future Structure of Electric Power System and Technology and Institutional Arrangement", International Conference on Power Systems Operation and Planning, 2002, Abuja, Nigeria
- "Electric Power Restructuring Technical Competence and Engineering Leadership", International Conference on Power Systems Operation and Planning, 2002, Abuja, Nigeria
- Letter to Dr. Shmuel S. Oren re: National Electric Power Policy, August 2002 (widely distributed over the Internet). Collected papers, Conference on Electricity, Too Important to Leave to Market, September 28, 2002, Washington. DC
- "Electric Power, National Security, and Our Economic Welfare," Public Utility Law Project, [www.pulp.tc/html/electric\\_power\\_national\\_secured.html](http://www.pulp.tc/html/electric_power_national_secured.html), May 2002
- "Small Consumers: What Has Hurt Them and What Can Be Done About It," *Review Etijdschrift*, April 2002
- "Transmission Choices For the Future," proceedings of NSF/EPRI Workshop, Washington, D.C., March 2002
- "Profits Now Versus Long Range Needs," *Review Etijdschrift*, April 2002, IEEE/NPS Symposium on Fusion, January 2002
- "Electric Utility Restructuring," *McGraw-Hill Yearbook of Science and Technology*, 2001
- "Small Consumers: What Has Hurt Them and What Can Be Done About It," proceedings of National Association of Regulatory Utility Commissions, November 2001
- "Inside the Electric Power Industry-Past, Present, Future," Rose-Hulman University, November, 2001
- "Errant Economics? Lousy Law? Market Manipulation? All Three!!," *Revue Etijdschrift*, October 2001



- "Electric Power Supply Reliability Declines, Costs Rise," *IEEE-USA News and Views*, September 2001
- "Impact of Electric Power Restructuring - A USA Overview", CIGRE Colloquium, July 13, 2001, Washington, D.C.
- "Electricity Choice: Pick Your Poison," *Public Utilities Fortnightly*, March 2001
- "Electric Power Deregulation and the IEEE," IEEE-USA Policy Perspectives, [www.todaysengineer.org/policyperspectives/features/powerdereg.htm](http://www.todaysengineer.org/policyperspectives/features/powerdereg.htm), January 2001
- "Reliability and Tools from Our Times," IEEE Computer Applications in Power, October 2000
- "Institutional Arrangements for Restructuring, The Case for Cooperatives," Proceedings, The Fourth International Conference, "Restructuring - The Power Industry for the Year 2000 and Beyond," July 2000, Accra, Ghana
- "Computer, Software, and Reliability," IEEE Computer Applications in Power, July 2000
- "Restructuring and Its Impact on the Cost and Reliability of Electric Power Systems," proceedings of Seminar of IEEE Power Engineering Society, April 2000
- "The Effects of Restructuring on Cost and Reliability," proceedings of IEEE Electric Power Conference, Tehran, Iran, February 2000
- "The Ten Commandments of Transmission Knowledge," proceedings of AEIC Electric System Reliability Committee Meeting, August 1999
- "The Ten Commandments of Transmission Knowledge," proceedings of Transmission Conference "A Crisis in the Making," May 1999
- "Executive Summary of Comments by J.A.Casazza and G.C.Loehr on Capacity Benefits Margin," Docket EL 99-46-000, proceedings of Technical Conference on the Capacity Benefit Margin, April 1999
- "Comments on Docket No. EL-99-46-000 FERC Technical Conference on Capacity Benefit Margin," May 1999
- "Effect of Restructuring on R&D," IEEE Insulation Magazine, January/February 1999
- "The Impact of Restructuring on Cost and Reliability", the IEEE Distinguished Lecture, December 1999
- "How New Competitive Mechanisms Can Affect Electric System Reliability-The Vital Message of the West Coast Blackouts," *Electrical World Executive Reports*, 1998 (book)
- "The Impact of Restructuring on Reliability," 45th IEEE North Carolina Symposium and Exhibition, October 1998
- Reliability Criteria and Their Enforcement, FERC 1998
- "Advanced Technical Training in Electric Power Systems for Those in the Electric Power Business," Cigré Paper LUC 2-03, Paris, France, September 1998
- "The Current State of Electric Utility Restructuring - the Impact on Cost and Reliability," Eastern Montana Section of the IEEE, May 1998

- "Blackouts: Is the Risk Increasing," *Electrical World* T&D, April 1998
- "Amerykanski Punkt Widzenia Na Reorganizacje Przemyslu Elektroenergetycznego," *Przegląd Elektrotechniczny R. LXXIV*, April 1998
- "How New Competitive Methods Can Effect Reliability", book by McGraw Hill Company, 1998
- "Processes for Assuming Non-Discriminatory Transmission Service as New Reliability Rules Are Developed," Testimony before FERC, Docket No. PL-98-3-000, February 1998
- Joint Planning of Generation Resources, 1998
- "The Impact of Restructuring on the Cost and Reliability of Providing Electric Service," 51st Annual Meeting, Kentucky Association of Cooperatives, November 1997
- "Electric Power Restructuring - How to Learn from the Experience of Others," Proceedings of IEEE/IEE International Conference, Toronto, November 1997
- "The Effect of Institutional Changes on Planning and Operation of Electric Power Systems," Symposium on Deregulation, San Jose, Costa Rica, August 1997
- "The Impact of New Trading Methods on Electric Planning and Operations in Two Regions of the USA," Cigré Symposium, Tours, France, June 1997
- "An American's View of the Reorganization of the ESI," IEEE Power Engineering Journal, April 1997, IEE Power Engineering Journal, April 1997
- "Electric Power Industry Restructuring in the USA, Minas Geras Government School," Brazil, December 1996
- "What the World Thinks About the U.S. Headlong Rush to Open Access," *Electrical World Magazine*, October 1996
- "Challenges for Power System Planners and Operators Due to Changing Institutional Arrangements," Special Report to Cigré Study Committee 37, Paris, France, August 1996
- "Power System Planning with Changing Institutional Arrangements," Cigré Study Committee 37, Paris, France, August 1996
- "Electric Power Industry Restructuring," University of West Virginia, March 1996
- "Transmission Access and Retail Wheeling: The Key Questions," *Electricity Transmission Pricing and Technology*, Electric Power Research Institute, January 1996
- "Cigré Continues Review of the Effects of Changing Institutional Arrangements," *IEEE Power Engineering Review*, August 1995
- "Views on the NAS/NAE/IM Convocation on Scientific Conduct," *Science and Engineering Ethics*, Volume 1, Number 2, 1995
- "The Effects of Changing Institutional Arrangements in the Generation Area," The Cigré Colloquium, Tokyo, Japan, May 18, 1995
- "Changing Institutional Arrangements in the USA," Cigré Working Group 37.15, presented in London on January 31, 1995, published February 24, 1995

- "Transmission Access and Retail Wheeling: The Key Question," contribution in EPRI publication *Transmission Pricing*, Spring 1995
- "Electric Power Systems and Transmission," Wiley, *Encyclopedia of Energy Technology and the Environment*, New York, February 1995
- "Third-party access: What should be done about it?" *Power Technology International* 1994, June 1994
- "The Changing World of Electric Energy," presented at the IEEE Winter Power Meeting, published in *L'Energia Elettrica*, Volume 7, March/April 1994
- "The Public Perception of Reliability," proceedings of the Power System Security in the New Electric Utility Environment Workshop, Iowa State University, Ames, Iowa, December 1993
- "Viewing Transmission Issues in Perspective," *IEEE Power Engineering Review*, Vol. 13, No. 10, October 1993
- "The Potential Future Interconnection of Electric Systems in Europe, the former Soviet Bloc, and North Africa," report on the UNIPED Meeting in Tunis, Tunisia, distributed by USEA and NERC, May 1993
- "The American Model: Strengths and Weaknesses," *Épure* (Electricité de France), April 1993
- "The Changing World of Electric Power Transmission," proceedings of the 1993 American Power Conference, Chicago, Illinois, April 1993
- "World Economic Developments and Their Effect on the U.S., Energy, Economics, Environment (E<sup>3</sup>)," *IEEE Power Engineering Review*, April 1993
- "Linking Power System Planners, the Public, and Energy Policy makers," Cigré Working Group 37.09, *IEEE Power Engineering Review*, Vol. 13, No. 1, January 1993
- "Electric Power Transmission & Restructuring - An International View," proceedings of the Electricity Supply Association of Australia, Ltd. 1992 Annual General Meeting, Adelaide, Australia, October 1992
- "Retail Wheeling: The Key Technical Questions," *The Energy Daily* Conference on Retail Wheeling, Washington, D.C., October 1992
- "International Experience in Improving Links between Power System Planners, the General Public, and Decision Makers in the Energy Policy Area," Cigré Working Group 37.09, September 4, 1992
- "Developments in Utilities Around the World," BC Hydro, Vancouver, British Columbia, July 1992
- "The Role of Engineers in Transmission Access," The 70th National Conference of Regulatory Utility Commission Engineers, Scottsdale, Arizona, June 1992
- "Competition, Coordination and the Future of Energy Management Centers," proceedings of the Empros Executive Seminar, Addressing Electric Utility Requirements in the '90s and Beyond, Minneapolis, Minnesota, May 1992
- "Technical Competence, Engineering Leadership and Electric Power," *American Engineer*, April 1992
- "1992 Winter Meeting Plenary Session, New Directions and the Engineer's Role," *IEEE Power Engineering Review*, Vol. 12, No. 4, April 1992
- "Technical Competence, Engineering Leadership and Electric Power," *IEEE Power Engineering Review*,

Vol. 12, No. 3, March 1992

- "Technical Competence, Engineering Leadership and Electric Power," *IEEE AES Systems Magazine*, February 1992
- "Electric Power, Market Forces, and the Public Welfare," *IEEE Power Engineering Review*, Vol. 11, No. 11, November 1991
- "Transmission Access and the Public Welfare," Ideas and Innovations -- Accessing Our Energy Future Conference, Indianapolis, Indiana, October 1991
- "Transmission Access and the Public Welfare," The Public Utilities Reports, Inc./Management Exchange/Palmer Bellevue Corporation's Third Annual Transmission Symposium, Washington, D.C., October 1991
- "Towards an Australian National Energy Network: An International View," The Energy for Tasmania in the 1990s and Beyond - Towards a National Energy Network Conference, Tasmania, Australia, October 1991
- "Wheeling and Transmission System Service Policy in North America," The IEE Fifth International Conference on AC and DC Power Transmission, London, England, September 1991
- "Transmission Access: The Questions Still To Be Answered," The MAPP 1991 Megatrends Conference, Minneapolis, Minnesota, September 1991
- "Electric Power Market Forces and the Public Welfare," *Elektrotechnika*, Budapest, Hungary, March 1991
- "IEEE in Czechoslovakia and Hungary," *IEEE Power Engineering Review*, Vol. 11, January 1991
- "New FACTS Technology - Its Potential Impact on Transmission System Utilization," proceedings of EPRI Workshop, November 1990
- "A Brave New World: Let's Look Before We Leap," *The Electricity Journal*, November 1990
- "Transmission Access," Introduction to Panel Session, IEEE Power Engineering Society 1990 Winter Power Meeting, Atlanta, Georgia, February 5, 1990
- "Pension Funds - Who Should Control Them?", *The Institute*, (IEEE) February 1990
- Testimony on the Relationship of Our National Energy Strategy to Our Nation's Security and Defense, Department of Energy's Hearing on "Energy, Defense, and Security Interests," Washington, D.C., December 1989
- Economic Analysis of Energy Systems: Principles of Good Practice*, co-authored with the Committee on Economic Analysis of Energy Systems, United States Energy Association, Washington, D.C., 1989
- "Case Studies on Increasing Transmission Access," section of "Electric Power Wheeling and Dealing, Vol. II - Working Papers," Office of Technology Assessment, U.S. Congress, Washington, D.C., 1989
- "Challenges to Power Systems Planning and Operations from Increased Competition," Cigré Study Committee 37 Meeting, Florence, Italy, October 1989
- "Technical Aspects of the Production and Transmission of Electric Power," the Deloitte, Haskins + Sells' National Public Utilities Industry Specialists Seminar, Atlanta, Georgia, August 1989
- "Cigré Offers a Worldwide View of System Operating Technologies," *Power International Edition*, June 1989

- "Computers, Coordination, and Competition," Keynote Address at the 16th Power Industry Computer Application Conference, Seattle, Washington, May 1988
- "Generation Planning and Transmission Systems," Cigré International Conference on Large High Voltage Electric Systems, Paris, France, August 1988
- "FERC Proposed Policies on Restructuring the Electric Power Industry," *IEEE Power Engineering Review*, Vol. 8, No. 7, July 1988
- "Coordination vs. Competition," before the North American Electric Reliability Council Operating Committee, June 8-9, 1988
- "Free Market Electricity: Potential Impacts on Utility Pooling and Coordination," *Public Utilities Fortnightly*, February 1988
- "Transmission Systems - Their Evolution in the U.S.A. - The Savings They Are Creating - Intersystem Coordination Procedures," presented at the IEEE AFRICON Conference, Abidjan, Cote d'Ivoire, Africa, December 1987
- "Three Case Studies of Impediments to Power Transfers," section of "Non-Technical Impediments to Power Transfers," (pages 195-248), The National Regulatory Research Institute, Columbus, Ohio, September 1987
- "Potential Impacts of Free Market Electricity on Utility Pooling and Coordination," The MAPP Megatrends Conference, Minneapolis, Minnesota, September 1987
- "The Impact of Potential Future Regulatory and Legislative Changes on the Planning of Interconnected Power Systems," presented at the 1987 IEEE/PES Summer Power Meeting, San Francisco, California, July 1987
- "The Changing Role of Transmission," The 1987 Missouri Valley Electric Association Engineering Conference, Kansas City, Missouri, April 1987
- "Transmission Systems in a Changing World," The *Electric World* Conference, Washington, D.C., April 1986
- "Analysis of the Evolution of Interconnections Between Regions in the U.S.A. Applicable to Developing Countries," the Cigré Symposium, Dakar, Senegal, November 1985
- "Understanding the Transmission Access and Wheeling Problem," *Public Utilities Fortnightly*, October 1985
- "Transmission Uses: Problem and Opportunity," presented at the EEI System Planning Committee Meeting, Baton Rouge, Louisiana, January 1985
- "Nuclear Power: Some Economic Effects of Institutional and Technical Changes," Fall 1984
- "Interconnections Grow in Value," *Electrical World*, December 1984
- "The Evolution and Importance of Planning/Criteria in the Planning Process," Caracas, Venezuela, June 1983
- Review of Electric Power Data Requirements*, Final Report to DOE's Energy Information Administration under Union Carbide Subcontract #62X-04166C, August 16, 1982
- "Improving Utilization of Transmission," Transmission and Distribution Exposition '82, Atlanta, Georgia 1982

- "The Future Availability of Electricity for Electric Vehicles," EPRI Electric Vehicle Review Meeting, Chattanooga, Tennessee, 1982
- "Efficiency of Utilization of the Capital Investment in Transmission Systems," IEEE/PES Conference and Exposition on Overhead and Underground Transmission and Distribution, Minneapolis, Minnesota, 1981
- "Electric System Planning - The Techniques and the Substance," International Congress on Systems, Caracas, Venezuela, 1981
- "Electricity vs. Gas in the Future," Cigré International Conference on Large High Voltage Electric Systems, Paris, France, 1980
- "Electric Power System Reliability - Lessons We Need to Learn," *Power Engineering Society Newsletter*, 1980
- "Solvent Refined Coal Potential," Energy Bureau Conference, Washington, D.C., 1980
- "The 1978 French Blackout -- Lessons to be Learned From It," Annual Conference of Protective Relay Engineers, Texas A&M University, 1980
- "Can Cogeneration Offer Investment Advantages?" EPRI Workshop on Cogeneration, San Antonio, Texas, 1980
- "The Engineer's Role in the Energy Crisis," *Public Utilities Fortnightly*, 1978
- "The Need for Energy Storage," Summary Proceedings, Forum on Energy Storage for Solar Applications and Transportation, Engineering Foundation Conference, 1977
- "Perspectives on the Development of Fusion Power by Magnetic Confinement, 1977," Report on the Fusion Power Reactor Senior Review Committee, Department of Energy, 1977
- "National Facility for Testing Utilities' Energy Storage Systems," The Battery Energy Storage Test (BEST) Facility, World Electrotechnical Congress, Moscow, USSR, 1977
- "An Assessment of Energy Storage Systems Suitable for Use by Electric Utilities," World Electrotechnical Congress, Moscow, USSR, 1977
- "Energy on Call," *IEEE Spectrum*, 1976
- "Energy Storage," Third Energy Technology Conference Proceedings, 1976; *IEEE Spectrum*, 1976
- "Report of Planning Representatives USA/USSR Technology Exchange Group, Power System Planning and Operation," USA/USSR Technology Exchange Program Power System Planning and Operation, 1976
- "What Can Hydrogen Do For An Energy Company?" IGT Annual Board of Directors' Meeting, 1974; *Weekly Energy Report*, 1974; *ASGE Tech Digest*, 1975; *AGA Monthly*, 1975; *Combustion*, 1976
- "Nuclear Energy Centers, An Assessment of Impact on Reliability of Electric Power Supply," National Electric Reliability Council, 1975
- "A Current View of the Impact of Postponements and Cancellations on Future Electric Bulk Power Supply in the United States," National Electric Reliability Council, 1975
- "Review of Overall Reliability and Adequacy of the North American Bulk Power Systems," (Fifth Annual

**Lynn N. Hargis**

5004 Fulton St. N.W.

Washington, D.C. 20016

(H)(202) 686-0415

(W)(202)454-5183

lhargis@citizen.org

**EMPLOYMENT AND EDUCATION BIO**

**June 2003 to the present:**

- Volunteer at Public Citizen, a 33-year-old, non-profit, non-partisan consumer advocacy group co-founded by Ralph Nader (Mr. Nader has not been associated with Public Citizen since 1980) as a utility lawyer and lobbyist.
- Work with Public Citizen to stop proposed congressional repeal of the Public Utility Holding Company Act of 1935 (PUHCA). Authored "PUHCA for Dummies" (see [www.citizen.org](http://www.citizen.org)) and other articles and editorials, under my name and those of others, to help educate legislators, lobbyists and consumers about PUHCA.
- Filed petition for review, along with a number of state attorneys general and other consumer groups, in D. C. Circuit Court of Appeals challenging current electric rate deregulation program of the Federal Energy Regulatory Commission (FERC) as inconsistent with the Federal Power Act and prohibited by controlling Supreme Court precedent.
- As lobbyist, have given presentations to Senate aides on PUHCA.
- Filed a motion to intervene on behalf of Public Citizen in the remanded proceeding on the AEP/CSW merger approval under PUHCA at the SEC.
- Filed a motion for summary judgment on behalf of Public Citizen opposing Enron's most recent application at the Securities and Exchange Commission for an exemption from PUHCA. Motion was declared moot since Enron agreed to register under PUHCA.
- Have written and spoken widely on utility regulatory issues. On February 19, 2004, I co-taught, with the vice president for policy and public affairs of the Edison Electric Institute, a seminar for selected journalists entitled "Grids, Gridlock & the Politics of Power" sponsored by the Knight Center for Specialized Journalism. Spoke on why the FERC market-rate program is illegal at Annual Meeting of National Association of State Utility Consumer Advocates on November 12, 2004.

### **January 1986 to June 2003:**

- Counsel at Chadbourne & Parke, LLP, in the Washington, D.C. office of this international law firm based in New York City. Worked in Energy, later Project Finance, division on regulatory matters under the Federal Power Act, PUHCA, the Public Utility Regulatory Policies Act of 1978 (PURPA) and other utility regulatory statutes, including state utility statutes, for clients that were primarily developers of, or lenders to, independent power plants around the world.
- Worked on leading edge large industrial consumer issues at FERC and on legislative matters, including opposition to PUHCA repeal, for the American Forest and Paper Association for many years.
- Brought cases in U.S. Courts of Appeal and in U.S. District Court for clients; participated in state utility proceedings and state court cases.
- Spoke and wrote widely on the Federal Power Act, PUHCA and PURPA. In January 2001, participated in a Chadbourne & Parke panel for Wall Street investment bankers, power plant developers, and others titled "California Chaos: The Implications for Generators and Banks," regarding the failed electric deregulation experiment in California.
- Participated in discussions with government officials in China, Middle East on electricity deregulation. Gave World Bank talk on U.S. utility regulation.
- Edited "The 1989 Electricity Yearbook," an Executive Enterprises Publications summary of the year's electric legal milestones written by Chadbourne & Parke attorneys.

### **September 1975 to December 1985:**

- 1979 to 1985: Served as Assistant General Counsel for Electric Rates and Corporate Regulation at the Federal Energy Regulatory Commission (FERC). Was responsible for the preparation of and advice to FERC regarding all orders relating to wholesale electric rates, qualifying facilities, federal rates and corporate regulation of utilities; supervised up to thirty attorneys and secretaries; member, Senior Executive Service.
- 1978 to 1979: worked in the appellate division of FERC (Office of the Solicitor) briefing and arguing cases in the United States' Courts of Appeal, including cases of first impression on the notice



ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11616

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
December 13, 2004

---

In the Matter of

AMERICAN ELECTRIC POWER  
COMPANY, INC.

:  
:  
:  
:  
:

ORDER ON MOTION  
TO INTERVENE

---

On August 30, 2004, the Securities and Exchange Commission (Commission) ordered a hearing on remand (Remand Order) in this matter. See Am. Elec. Power Co., Holding Co. Act Release No. 27886. In accordance with the Remand Order, non-party persons seeking leave to participate in the proceeding, pursuant to Rule 210 of the Commission's Rules of Practice, were allowed to do so by December 3, 2004.

On December 3, 2004, National Association of Regulatory Utility Commissioners (NARUC) filed a notice of appearance and motion to intervene (Motion) seeking leave to intervene in this proceeding as a party under Rule 210(b) of the Commission's Rules of Practice. NARUC states that it is "a quasi-governmental nonprofit organization" that represents the collective interests of its members, which are public utility regulatory commissions from all the fifty states and the District of Columbia. NARUC, in its Motion, seeks intervention as a party, rather than as a participant on a limited basis, because of what it describes to be "the extremely significant national regulatory policy implications" this proceeding may have on its members' interests. Motion at 1. NARUC argues that intervention will provide the Commission with "the benefit of the immediate perspective of State regulators that no other party to this proceeding can adequately represent." Motion at 3.

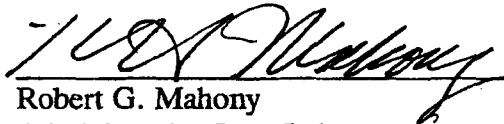
On December 10, 2004, American Electric Power Company, Inc. (AEP), filed a response to NARUC's Motion. Although it states that it does not oppose NARUC's intervention, AEP does request that NARUC's participation be limited, pursuant to Rule 210(f) of the Commission's Rules of Practice, to the issues raised by the parties in their narrative statements and witness lists. Specifically, AEP requests that NARUC not be permitted to raise new issues or arguments, or to submit testimony or other evidence, since the time period for identifying potential areas of testimony has already passed.

Because NARUC was not one of the eight groups of intervenors in the original proceeding, I find unpersuasive NARUC's conclusory statements that its interests in this

remand proceeding are now so significant that they will not be adequately protected if it is only permitted to intervene as a non-party under Rule 210(c) of the Commission's Rules of Practice. Am. Elec. Power Co. and Central and South West Corp, 72 SEC Docket 1931, 1940-42 (June 14, 2000). NARUC's request to intervene in this proceeding as a full party, therefore, is DENIED.

NARUC will be permitted to participate in the underlying proceeding on a limited basis as a non-party participant in accordance with Rule 210(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.210(c). As such, NARUC's participation will be limited to non-duplicative involvement and other matters germane to the issues on remand. NARUC is permitted to participate in any forthcoming prehearing conferences or exchanges and may make submissions not already past due. The next such submission is the written direct testimony of all the parties' witnesses, due December 15, 2004.

SO ORDERED.

  
Robert G. Mahony  
Administrative Law Judge